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A

COLLECTION

OF

CURIOUS DISCOURSES

WRITTEN BY

EMINENT ANTIQUARIES

UPON SEVERAL HEADS IN OUR

ENGLISH ANTIQUITIES.

TOGETHER WITH

MR. THOMAS HEARNE's PREFACE AND APPENDIX TO THE FORMER EDITION.

TO WHICH ARE ADDED

A GREAT NUMBER OF ANTIQUARY DISCOURSES WRITTEN BY THE SAME AUTHORS.

MOST OF THEM NOW FIRST PUBLISHED FROM THE

ORIGINAL MANUSCRIPTS.

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A

COLLECTION

OF

CURIOUS DISCOURSES.

Nº I.

The Antiquity, Authority, and Succeſſion of the High Steward of England.

By Sir ROBERT COTTON, Bart.

FOR the clearing of this ſubject we will treat,

I. Of the name.

II. Of the two principall ſpecies or kinds.

III. Of the antiquity.

IV. Of the juriſdiction or authority.

V. Of the preheminence or dignity.

VI. Of the compenſation or allowance of the high ſtewardſhip of England, being the firſt of thet wo principall ſpecies.

I. The name.

The Engliſh name STEWARD, quaſi STEDWARD, conſiſteth of two Saxon words STED or STITH ſignifying a *houſe*, and WARD a *guardian*, *guide*, or *gouernour*, which though not in ſound, yet in ſenſe wholy agreeth with the Greeke name Οικονομος, and likewiſe with the French and High Dutch Names. The vulgar Latine name *Seneſchallus*, Tillius deriueth of *ſchall* a ſeruant or miniſter, and *cheſind* familia; ſo that *seneſchall*, or rather *cheſindſchall*, with him

is as much as to ſay *a miniſter of the family*, a deriuation altogether hard and vncouth. Lupanus gueſſeth it from *ſen*, whereby he would ſignify *juſtice*, and *ſchalk*, præfectus, as if he would ſay *the principall magiſtrate for the ordering of juſtice*. The diuerſity of names this office hath put on, are as many as the diuerſe dutyes of all the ſeueral ſtewards. Hottoman ſayeth, that *maior domus*, *magiſter hoſpitij*, *prouiſor aulæ*, *comes domus regiæ*, *præfectus aulæ*, *comes palatij*, *magiſter palatij*, *& præfectus prætorio* [which names betoken the higheſt dignityes that can befall a ſubject either in court or kingdome] are all one *ſeneſchallus*. Tillius ſayth, that in France *comes palatij* vnder the two firſt familyes of the Merovingians and Carolovingians, changed to *ſeneſchallus* vnder the third. *Princeps*, *præpoſitus*, *& ſeneſchallus*, John Platina vſeth as words of one ſignification. The Eaſterne Empire called their ſteward *curopalates* or *curator palatij*; the High Germans *Hanſehoffmaſter*; and the French *maiſtre d'hoſtell* and *ſaneſchall*. Thus much of the name.

2. The two principall kinds of ſteward.

The two principall ſpecies or kinds are the *grand regall office of high ſteward of England*, and the oeconomicall office of *ſteward of the kings houſehold*. The one being a cheife officer ouer the whole ſtate, and the other a principall commander in court. The firſt immediately and vniuerſally repreſenting the power and perſon of the king, the ſecond in a degree inferiour, and that onely within the veirge of the court, the juriſdiction of the firſt ſurmounting the greateſt peeres; but the authority of the other reſtrayned onely to officers of the veirge and houſehold.

3. Antiquity.

Now for the antiquity. There is no doubt but theſe offices at the firſt, as all other, ſprang from the eaſe of the prince's duty; for ſoe Caſſiodore ſayth of this very dignity, that it was *ex diuerſis titulis defloratа ad leuamen principis*. Geffrey of Monmouth deriueth it as high as from the Britiſh King Caſſibelan, to whom [he ſayth] Belin was ſteward, and vnder him maſter of juſtice; for ſoe an Engliſh tranſlation very aunciently written hath it. Alſo Edward the Confeſſour had a ſteward called Houelin, as appeareth out of his charter for the keeping of Waltham for-

Belin ſteward to Caſſibelan. Houelin high ſteward to king Edward the Confeſſor.

reſt,

reſt, beginning thus: Ich, Edward, King, &c. witneſſe buſhop Wolſton and Clerkes ycleped many one,

And Sweyn of Eſſex our brother,
And teken him many other,
And our ſteward Houelin,
That beſought me for him.

But however this inferiour and houſehold office of ſteward may deſcend from the Britons and Saxons, yet the learnedſt of our antiquaryes hold, that the grand office of high ſteward came from the Normans to vs, and from the French to them. Nor was it then an office momentary or extraordinary as now, but hereditary from father to child. For it appears out of our Engliſh ſtory, that among many worthy perſons that came in with the Conquerour one Sir Hugh of Grantmeſnil [alias Grentemaiſnell] a Norman of noble deſcent, ſoe valiantly behaued himſelfe, as the king rewarded him, not onely with great ſtore of lands and mannours in the ſhires of Glouceſter, Northampton, Leyceſter, Nottingham, and Suffolk, but alſo richly marryed him to one Adeliza, a great inheritrix of a noble family, and at the ſolemnization thereof, gaue him the office of lord high ſteward of England. By this Adeliza he had two daughters, Petronilla or Pernell the eldeſt, and Adeliza the ſecond, who marryed Roger Bigod a Norman. All the inheritance of the ſayd Sir Hugh Grentemaiſnell was diuided betwixt thoſe two daughters, ſauing that in the partition, the lordſhip of Hinkley, and office of high ſteward of England fell to Pernell, becauſe ſhe was eldeſt. This Pernell marryed to Robert ove les blanches maines, or Robert with the white hands, the ſonne of Robert Le Boſſu, earle of Leyceſter, &c. Soe that this Robert was the firſt of the houſe of Leyceſter, in whom this office tooke roote. Hee was a man valiant, he accompanyed Richard in the Paleſtine warrs, and in the yeare 1190 was ſlain before Acon. He had yſſue the famous warriour Robert Fitz Pernell [ſo called of his mother's name] who was alſo lord ſteward of England. He followed his father's ſteps, and was taken priſoner with king Richard. But

High ſtewardſhip of old hereditary. Lib. Domeſday.

Sir Hugh of Griantmeſnell the firſt high ſteward after the Conqueſt.

Robert with the white hands ſecond ſteward, firſt of the houſe of Leyceſter.

Robert Fitz Pernell third ſteward.

dying without yſſue, all his inheritance befel to his two ſiſters, Amicia the elder and Margarett the younger, which marryed to Saher de Quincy earle of Wincheſter. The elder had the office of high ſteward, becauſe it was not partible, which was executed by Simon de Mountfort her huſband; which Simon atteyning the ſayd office jure Vxoris, loſt boeth honour, land, and office for his diſobedience to king John; he was baniſhed, and afterward ſlaine before Tholoſa. His lands were given to Randolfe earle of Cheſter; but the king reteyned in his owne hands the Stewardſhip, as annexed to the crowne by forfeyture. But notwithſtanding this errour of the father, his ſonne Simon de Mountfort by his valour and worthy feates of warr ſoe gayned the favour of his ſoueraigne king Henry the third, and the loue of the king's ſiſter, as he obteyned her for his wife, and for augmentation of honour vnto him he was reſtored to the dignity of the earldome of Leyceſter, and high ſtewardſhip of England. But ſuch was the diſaſter of this man, that the new begunn variance betwixt king Henry the third and his nobles, for not obſeruing the new decrees att Oxford, being choſen captaine for the nobility, he tooke the king priſoner; but his ſonn the prince eſcaping renewed the warr, and ſlew this Simon at the battell of Eueſham, Anno 1263, 48 Henry 3ti. Soe that though he had yſſue Simon, Guy, and other ſonns, yet they neuer enjoyed this office of ſtewardſhip, nor earldom of Leyceſter, which after was giuen [as I take it] to Edmund earle of Lancaſter, and ſoe remayned in that houſe till it was incorporated in the crowne in king Henry the fourth. In the Reigne of king Richard the ſecond, John duke of Lancaſter was high ſteward, boeth at the king's coronation, and alſo att the arraignment of Richard earle of Arundell. At the coronation of king Henry the fourth the king gaue in the right of the earledome of Leyceſter, the office of high ſteward of England vnto his ſecond ſonn Thomas duke of Clarence; and by reaſon of his tender age he was aſſiſted by Thomas Percy earle of Worceſter, and ſate as lord high ſteward in the White Hall of the palace at Weſtminſter, and cauſed inquiry to be made what offices were to be exerciſed

Simon de Mountfort fourth high ſteward.

Simon de Mountfort fifth high ſteward of England.

High ſtewardſhip of England transferred from the houſe of Leyceſter to the dukes of Lancaſter.

Lord high ſteward aſſiſted in the performance of his place.

exercised by any manner of person on the day of the king's coronation. King Henry the seventh granted his commission to two, or three, to execute the place of high steward boeth att his owne, and his queenes coronation. The statute anno 31° Hen. 8th, which hath sett downe the placing of great officers, doeth make noe mention of the high steward; which is a plaine argument, that this office was quite worne out of ordinary, and hereditary use long before his tyme. Thus for the antiquity.

4. Authority.

As touching the jurisdiction and authority in tymes past, there was wont to ride in circuite throughout Normandy, a certaine justicer, who was called the *princes seneschall*, or *Steward*; and what pertained to his office may best appear in the old customary book of the dutchy of Normandy: and I doubt not, but it will bee agreed, that whatsoever belonged to that office, must needes also be attributed vnto this, the very same office hauing been planted and executed here in England. For in the Red, and Blacke-bookes of the exchequer, Robert with the white hands before-mentioned [è contra] by virtue of his office of High Steward was termed *capitalis justicia*, and *primus præsidens in Anglia*. But among many branches of the High Stewards authority we will specify these few.

The old customary booke of the dutchy of Normandy.

1. Gouernment of the kingdome, and all officers vnder the king.

His office is vnder, and immediately after the king, to ouersee, and gouerne the whole kingdome, and all the officers of justice, boeth in peace and warre.

2. Receauing petitions, and calling corrupt judges to account.

If any complaynt be made either to judges, or to the king, and the complaynant be not able in due season to obteyne remedye, he is bound to receaue their complaynts, and keepe their petitions till the next parliament, and to call judges to account, that delay, or deny justice.

3. Remouing of euil counsellors from the king.

If the king haue euill councellours, or such as be hatefull to the people, he is to aduise him thereof, and to use his best endeavour for their remoue: as it happened to Godwyn, earle of Kent, in the tyme of Edward the Confessour: to Hubert de Burg, earle of Kent, in the reign of king Henry the third: the like to Pierce Gaveston, in the days of Edward the second: yea, their authority stretcheth to a

farr larger ſize then this, as it appeareth plainely in an auncient manuſcript diſcourſe, intituled, *hic annotatur, quis ſit ſeneſcallus Angliæ, & quid ejus officium*, being in the hands of ſome antiquaryes.

4. Limitation of towns, and villages, and appointing of high-wayes.

It belongeth to his office, to limitt and bound townes, and villages, and to cauſe ſtreets, pathes, and high-ways to be ſet in their auncient places, and thoſe which be ſtopped, to be opened.

5. Diſpoſing of claymes at the coronation.

After the death of the prince, he keepeth court in the king's hall judiciall, to receaue petitions of ſuch of the nobility, and others, as by reaſon of their tenures, clayme to doe ſeruice at the king's coronation. As did John duke of Lancaſter, earle of Leyceſter, and high ſeneſchall of England, att the coronation of king Richard the ſecond, and Thomas Percy, earle of Worceſter, att the coronation of king Henry the fourth, being ſubſtitute to Thomas the king's ſonn, as is aforeſayd.

6. Commanding of Money to be payd for the king's ſeruice.

It is alſo euident out of the Red, and Blacke-bookes of the exchequer, that he might command money to be payd for the king's ſeruice att his pleaſure. And he might alſo make his own writ, &c. and no maruell, for he had the principall command in the exchequer, and ſat as judge, and preſident there.

7. Authority of ſummoning att the arraignment of a peere, and of giuing ſentence.

Alſo upon the arraignment and tryal of any peer of the realme in caſes of treaſon, or felony, he firſt directeth forth a precept to the juſtices, before whom the indictment is taken, willing them to certify the ſame indictment at a day and place by him aſſigned, and doeth likewiſe direct another precept to one of the ſergeants at arms for the ſummonition of the peeres againſt the day of tryall. The like precept doeth he alſo ſend to the conſtable, or lieutenant of the Tower, to bring forth the peere being priſoner the ſame day. Laſtly, he hath power to pronounce ſentence of death againſt the peere, being found guilty. Yea, his authority in this kind hath bin ſoe abſolute, that John duke of Lancaſter, high ſteward of England before-mentioned, in the tyme of king Richard the ſecond, gaue ſentence, and judgment againſt Richard earle of Arundell,

John duke of Lancaſter high ſteward gaue ſentence in the preſence of the king.

euen

euen in the preſence of the king; his words were theſe, *Richard, I John, ſteward of England, judge thee, to be a traitour, and I condemne thee, to be drawne, hanged, headed, and quartered:* but the king for reuerence of his bloud, commanded him to bee beheaded. But ſithence the tyme of Henry the fourth, this office hath been extinct in the crowne, being reuiued onely by patent under the broad ſeale, att extraordinary tymes of the princes funerall, coronation, feaſts, parliaments, or at the arraignment of a peere, being bounded within very ſtreight limitts of tyme, & pro illa vice tantum.

High ſtewardſhip from Henry the fourth extinct in the crowne.

5. Dignity.

Now if his juriſdiction and authority be of ſuch high and princely moment, how can the pre-eminence, and dignity of his place but be anſwerable? ſoe highly was this office honoured in France, that the ſteward was choſen by one and the ſame kind of election with the king; namely, by the ſuffrages, or voyces of the people: for *Franci* [ſayth an auncient writer] *regem hildericum ſuper ſe leuant, majorem domûs Vulfricum*; yea, it grew to that exceſſive height, that Hottoman ſayth of the ſtewards of France, att and before the tyme of Pipin, *cum regiam poteſtatem aliquamdiu obſedíſcent, tandem pro ſua occupauerunt.* Eginhardus ſayth of the ſucceſſour to Pipin the great, *inane regis vocabulum, quia ſolo nomine regnabant.* But it may be rightly objected, that this pre-heminence ſoe unbounded and matchleſs, was meerely uſurped, and not to bee tollerated in a ſtate Monarchicall: let vs ſee therefore, of right, what dignity he ought to haue. Out of the Red and Black-bookes of the exchequer ſoe often mentioned, it plainely appeareth of our ſecond Steward Robert with the white hands, *quod per univerſum regnum præſidentis officium obtinuit:* and in another place, that he was *Primus poſt Regem in regno:* and it is ſayd of him in a third place, *Magnus eſt hic, cujus fidei totius regni cura, imo & cor regis committitur.* Alſo his dignity may well be conjectured out of the ſeuerall names in the firſt part of this diſcourſe. But they that ſpeake moſt modeſtly of it, as John Platina, ſay, that he is to be ſtiled *ſpectabilis*, a title farr aboue *honorabilis*, and that

High ſteward, preſident ouer the whole kingdome. Second to the king. To whom the care of the kingdome, and the kings heart is committed.

he had of old an equall place *cum comite Ægypti*, being, as I take it, all one with a proprætor, or viceroy. *Officium ejus* [ſayth Caſſiodore] *tanta genij prærogativa decoratur, ut militiæ perfunctus muneribus, ornetur nomine principatus.* His place is before the conſtable, in the ſtile of Thomas of Lancaſter, great ſeneſchallus of England, and conſtable of the king's army. Hitherto of his dignity.

6. Allowance. *Now as touching his compenſation and allowance*, boeth for his fee, and his entertainmente in houſehold, though I can yet hunt out noe certainety, yet I may thus conjecturally roue att it: that to the higheſt authority and dignity belongeth the largeſt fee, and the moſt magnificent, and princely entertainment. Aymonius ſayth, that in France the *maior domûs* had allowed him in court *duodecim vaſſallos*, twelue ſeruants, to attend vpon him. And if the allowance of the ſteward of the houſehold be ſoe large, as we will forthwith declare; then by that wee may gueſs, how much more ample the fee, and prouiſion of the lord high ſteward ought to be: ſufficeth thus much concerning. 1, the name of ſteward in general. 2, the two principall ſpecies thereof. 3, as likewiſe the antiquity. 4, authority. 5, dignity. 6, the allowance of the lord high ſteward.

It now reſteth, that we examine more particularly the nature of the ſecond ſpecies, namely the ſteward of the king's houſehold: which office, becauſe it was neuer hereditary as the former, but onely *ad libitum regis*, we will not greatly ſearch into the antiquity, but onely into the juriſdiction, and allowance thereof.

For illuſtration whereof, it may moſt fitly be compared, and reſembled to the magiſterij dignitas in France deſcribed by Caſſiodore. *Ad eam* [ſayth he] *pertinet Palatij diſciplina.* By him that beares this office, *ordines ſine confuſione componuntur.* He is *dominatur aulici conſiſtorij*; *cauſarum maximum pondus, in ejus audientiæ finibus reponitur*; *per eum legatorum pronunciantur adventus. peræquatores victualium rerum in urbe regia propria voluntate conſtituit.* And to this accordeth in part *magiſter hoſpitij*, by *Guernius Piſo*, whoſe authority *concernit principaliter adminiſtrationem hoſpitii*,

hoſpitij regij, et ſub ejus cognitione, & punitione ſunt omnes officiarij ipſius regis. And Hincmarus ſayth of the ſeneſchall in the court of Charles the great; *ad omnia reſpicit in aula regis.* All theſe doe exactly point out the *ſeneſchallus hoſpitij regij*, as Fleta hath it. For [ſayth he] *poteſtatem habet in omnes injurias, in omneſque actiones criminales, & perſonales, plenam juſtitiam exhibere, &c.* The mareſchall is as his ſheriffe, to attach any one, *de quo fit queſtio, aut clamor, dum tamen intra metas hoſpitij.* He is as the cheife juſtice in the kings progreſs, and may direct or make out a warrant to the ſheriffe, in whoſe county the king will be commorant, to ſummon all partyes to tryall, ſo long as the king is there reſident. And thoſe, which cannot be determined, he may adjourne *de die in diem, vel in bancum, vel in primas aſſizas*, &c. and this he may doe in a priuate liberty, becauſe his authority is deriued from the king's prerorative: and that in the kingdome of another prince, as appeareth by a caſe anno 14° *Edwardi primi.* For one arraigned of felony before the caſtellan of Paris, where the king of England then held his court, was notwithſtanding by the French king's councell deliuered to the king of England's ſteward, to be tryed in his court, where accordingly judgement, and after, execution was made of the party. This ſteward hath power to proceed to outlawry, and *duella injungendi*, &c. It ſeemeth, they kept of old certaine rolls, called *placita aulæregis*; the view of them would giue light to this argument in hand. But of all bookes, and records, tending to this ſcope, there is none more pregnant and plaine, then the old booke of record, called *Domus regis Angliæ*, preſerued in the counting-houſe of the houſehold: out of which, as likewiſe out of diuers auncient records it is euident.

The mareſchall ſheriffe to the lord ſteward of the houſehold.

Lord ſteward of the houſehold, lord chiefe juſtice in the king's progreſs.

He hath power to proceed to outlawry, and injoyne combatt.

The old booke in the counting-houſe, called Domus regis Angliæ.

I.

The manner of the lord ſteward's creation.

Firſt, that the ſteward of the king's houſehold receaues his charge of the king's high, and proper perſon, and the houſehold ſtaffe in theſe words; *ſeneſchall, tenez le baſton de noſtre Maiſon.* By which forthwith he is alſo ſteward of the marſhalſea, that is the court of the houſe-

hold, of which he is a judge of life, and limb. And the treaſurer, comptroller, cofferer, two clerkes of the greene-cloth ſitt at the board of doome, or greene-cloth, with him in the counting-houſe, but as recorders, and witneſſes of the trueth, himſelfe being as judge, commander, and guyder of the whole houſehold.

Treaſurer, comptroller, cofferer, &c. onely asrecorders, and witneſſes, himſelfe ſole judge.

Noe commandment, or charge, ought to be giuen to any officer in court without his notice, and aſſent firſt had, and in the houſehold rules and judgements, he repreſenteth the king's Eſtate, and his ſtaffe is taken as for a commiſſion.

2. Noe charge to any officer in court without his notice.

He may adnull ſome cuſtomes of the houſehold [*ſaluis pro honore, & proficuo regis*] by aduice taken att the greene-cloth counting-board.

3. He may annull the cuſtomes of the houſehold.

This ſteward repreſenteth the ſtate of an earle. And by the ſtatute of 25 E. 3. cap. 4. in reſpect of diuers abuſes committed by the king's butlers, and takers of his wine, it was then enacted, that the ſteward, or treaſurer of the houſehold ſhould aſſigne warrant for wine for the king's houſehold.

4. Authority to aſſigne Warrant for wine.

And by the ſtatute of 27 E. 3. cap. 8. If any plea happen touching matters of the ſtaple, and concerne any of the houſehold, the ſteward, or his lieutenant, and the marſhall of the houſehold ſhall be with the mayor of the ſtaple, to ſee that right be done, &c.

5. His correſpondence with the ſtaple.

6. Anno 3 Hen. 7. cap. 13. The compaſſing the death of any councellour of eſtate, ſteward, treaſurer, or comptrouller of the houſehold, is made felony, and judgment to be giuen, and execution done accordingly, and there is layd downe the manner of proceeding, to impannel a jury of the king's ſeruants in checque roll, &c.

7. Another ſtatute was made, 15 Hen. 6. touching pleas to bee holden before the ſteward of the houſehold; but nothing elſe touching the authority.

8. The ſeale of this office in Edward the third's tyme, Ralfe de Stafford being then lord ſteward, was a cheueron in a plaine feilde, with two lyons ſupporters, and ouer the ſcutcheon a lyon paſſant gardant with this circumſcription: *ſigillum officij ſeneſchalli, &c.* It is euident out of old deedes

deedes and records, that in the firſt yeare of Edward the 3d. John de Roos was ſeneſchall of the houſehold. Alſo anno 18 Edward 3. Ralfe de Stafford before-mentioned; and anno 25 Edward 3. John Gray de Rutherfeild bare the ſame office. Item, anno 9 Richard 2. John Montecute was *ſeneſchallus hoſpitij*. Likewiſe 23 Henry 8. Charles Brandon duke of Suffolke taking this place vpon him, was by act of parliament called by a new ſtile; *Grand maiſtre del hoſtell du roy*. Butafterward anno 1 Mariæ it was beſtowed vpon the earle of Arundell, and reſtored to the former denomination. And in her late majeſty's tyme lord William earle of Penbroke commanded in the ſame place. Hitherto, though in confuſed and imperfect order we haue ſpoken of the authority, dignity, and antiquity of the lord ſeneſchall or ſteward of the king's houſehold. It now reſteth, that we ſhould breifely ſpeake of his allowance.

I have heard alſo, that the earle of Leyceſter had the ſame office.

Of auntient tyme therefore he had daily in the hall eating, a chaplaine, two eſquires, foure yeomen, and in chamber daily for his breakefaſt meate, and liuery for all night, eight loaues, foure meſſe of great meate, two rewards of roaſt, two pitchers of wine, ſix gallons of ale, and from Alhallowntide to Eaſter, one torch to attend upon himſelfe, one tortois to fetch his liuery by, three perches of waxe, ſix candles of waxe, eight candles of tallow, foure faggots, litter, and ruſhes all the yeare of the ſerjeant vſher of the hall and chamber. And after winter ſeaſon four ſhides, and two faggotts. And when him liſteth to haue more largely in any thing, then his chamberlaine, that doeth fetch and receaue it, muſt record thereof by tally or bill in the counting-houſe. Alſo he hath out of the counting-houſe for his fee at Eaſter and Michaelmas twenty markes, and for his robes ſixteene markes, and for his napery att the foure annuall feaſts three pieces of great linen cloth out of the great ſpicery, or elſe in money thirteene pounds one ſhilling and foure pence.

Black-book of the houſehold.

To conclude, ſoe vnſupportable grew the ambition, and the authority ſo vnlimitted of the lords high ſtewards in the former tymes, that his majeſty's predeceſſours in this kingdome haue bin conſtrayned to extinguiſh theinheritable right

and ordinary execution of their office, and wholly to incorporate the ſame into their royali crowne and ſoueraigne prerogatiue, communicating it onely to the ſubjects for very ſhort ſpace, either in caſes of greateſt neceſſity, or in tymes of higheſt ſolemnity.

Nº II.

Of the ſame.

By Anonymous.

THIS queſtion is ſoe large, that it muſt either procure infinite payne or obſcurity in the obſeruer, and leaue the hearer to his beſt vnſatisfyed. For it conteyneth beſide the *high ſteward* or *ſeneſchallus hoſpitij*, all other the vnder offices of that name, which generallity maketh the antiquity as vncertaine as the diuerſity, and boeth more then the etimology, I meane the Latine, as for the Engliſh, I take it from ſted, or ſtitts, and ward, the howgard. Of the office I fynd a double deriuation. One by Tilius from the old German word *ſchall*, which is ſeruant or miniſter, and *geſind familia*, gehnſchall, the miniſter of the family; but this is hard either in ſenſe or ſound. Lupanus gueſſeth it from *ſen*, whereby he would ſignify juſtice, and *ſcalcum præfectus*, this ſeemeth nearer to boeth, if he be able to proue his firſt word. The diuerſity of names this office hath put on, are as many as the diuerſe dutyes of all the ſeuerall ſtewards; for in ſome part they will one ſute the other. Hottoman ſayth, that *major domus*, *magiſter hoſpitij*, *prouiſor aulæ*, *comes palatij*, *& præfectus prætorio* are the ſame with *ſeneſchallus*, though ſeuerally inlarged and reſtrayned to the affections of tymes and maſters. I ſhould take *magiſteriæ dignitas* in Caſſiodore to be more neare to our ſteward then any of theſe: yet Tilius ſayth, that *comes palatij* vnder the two firſt familyes changed to *ſeneſchallus* vnder the third. *Princeps præpoſitus & ſeneſchallus*, *Johannes Platina* uſeth as ſynonimas;

ſynonimas; and ſoe farr as *ſeneſchallus* hath *munus ſubminiſtrandi dapes*, he is *Architriclinius* with Lancelot. The eaſterne emperours called the ſteward *curopalates* or *curator palatij*; the High Germans *hanſehoffmaſter*, and the French *maiſtre del hoſtell*, and *ſeneſchall*. Thus much for the name. Of the office I would have uſed ſome order in the queſtion, but the functions are ſoe intermingled, that itt will ſcarce giue leaue. There is noe doubt but theſe offices conteyned in our queſtion, as all other, ſprang from eaſe of the prince's duty; for ſoe ſayth Caſſiodore of *magiſteriæ dignitas, ex diuerſis titulis deflorata ad leuamen principis*. But in France it incroached to ſuch a pitch, that [as Hottoman ſayth] *cum regiam poteſtatem aliquamdiu obſediſſent, tandem pro ſua occupauerunt*, leauing onely the king, *vt chartæ & priuilegia regis nomine ſcriberentur*; but *cætera regni negotia maior domûs adminiſtrabat*, ſayth Aymonius; and therefore Eginhartus ſayth of the ſucceſſour of Pipin the Great, *ſuaue regis vocabulum, quia ſolo nomine regnabant*. The feare of the like may be ſome cauſe, that our kings haue deueſted this ſtate from the continuall practice of ſuch an officer, afterwards beleauing it enough to make that but by commiſſion at pleaſure, and that onely for ſeruice of ſtate, as coronations, funeralls, feaſts, and parliaments, and for juſtice in tryall of any peere in queſtion of treaſon or felony.

This office the queene's courts had as well as the kings; for *Gregorious Turonenſis* nameth Waddonem *maiorem domûs in aula reginæ Ragunthæ*.

And in theſe tymes he was choſen, as well as the king, by the ſuffrage of the people; for *Franci Hildericum ſuper ſe levant maiorem domûs vulfridum*. But it fell after there to be hæreditary; for ſoe had *comes andium officium magni ſeneſchalli, aut magiſtri Francici hæreditarium*. The *magiſteriæ dignitas* by Caſſiodore deſcribed, hath of any the auncient offices moſt part with ours; for *ad eum* [ſayth the author] *pertinent palatij diſciplina*; by him *ordines ſine confuſione componuntur*; hee is *dominus aulici conſiſtorij*; *cauſarum maximum pondus in ejus audientiæ finibus reponitur*; *per eum legatorum pronuntiatur aduentus: peræquatores victua-*

lium

lium rerum in vrbe regia propria voluntate conſtituit. And to this accordeth in part *magiſter hoſpitij* by Guerimus Piſo, whoſe authority *concernit principaliter adminiſtrationem hoſpitij regis, & ſub ejus cognitione, & punitione ſunt omnes officiarij ipſius regis.* And Hincmarus ſayth, that the ſeneſchall in the court of Charles the Great [which is the firſt tyme I find the word] who beſides *potus & victus caballorum* [which was the reguard of the *buticularius, & comes ſtabuli*] *ad omnia reſpicit in aula regis.* All theſe doe exactly point out the *ſeneſchallus hoſpitii regis*, as Fleta doeth deliuer it; for *poteſtatem habet, ad omnes injurias omneſque actiones criminales, & perſonales, plenam juſtitiam exhibere*, &c.

The mareſchal is, as his ſheriffe, to attache *de quo ſit queſtio, vel clamor dum tamen inter metas hoſpitij.* He is as the chiefe juſtice in the king's progreſs, and may direct out warrant to the ſheriffe, in whoſe county the king will be commorant, to ſummon all partyes to try all ſoe long as the king is there reſident, and thoſe which cannot then be determined he may adjourne *de die in diem, vel in Bancum, vel in primas aſſiſas*, &c. And this he may doe in any liberty priuate, becauſe his authority is deriued from the king's prerogative; and that in the kingdome of another prince, as appeareth by a caſe, 14 E. 1. where one arraigned for felony before the Caſtellane of Paris, where the king of England then held his court, was notwithſtanding by the French king's councell deliuered to the king of England's ſteward, to be tryed in his court, where judgment, and after execution was made to the party. The ſteward hath power to proceed to outlawry, and *duella injungendi*, and of any tryall, that the itinerant juſtices may; but *de libero tenemento ſe intromittendo non debet ſine breue.* It ſeemeth they kept of old certaine rolls called *placita aulæ pro rege*, the view of them would giue light to this queſtion. And thus far for his juriſdiction, for his ſtate ſoe much, he wayteth with the lord chamberlaine att the chriſtening of the king's children.

N°. III.

Of the ſame.

By Mr. TOWNSHEND.

Junii 1663, anno 1°. Jacobi apud Derby.

THIS queſtion, although prima facie it ſeemeth to bee a queſtion too generall, yet notwithſtanding I am induced in reſpect of the late queſtions had touching great offices, to thinke, that it is not meant of particular petty ſtewardſhips of vnder-courts, or the like; and therefore I will be bold [notwithſtanding any ſtatute] to encloſe this large common, and bring into it two paſtures, and to diuide the generall queſtion into the grand regall office of high ſteward of England, and into that œconomical office of ſteward of the king's houſehold; the one being a cheife officer of ſtate, the other a principall commander of houſehold, and boeth being the naturall ſubjects; as I conceaue the queſtion of the antiquity, and office of ſteward of England.

I will not trouble you with etymologick expoſition, or the originall of the word *ſeneſchall*, but leaue that to the curious, and ſtudious linguiſts. And becauſe it is reaſon, that the beſt ſhould haue beſt place, I will firſt ranke the cheife ſtewardſhip of England with his appendixes, and ſoe the ſtewardſhip of the houſehold, to march after in like order. And firſt of the originall of the office of high ſteward, and of the inheritance, and other matters, which are *tanquam accidentia inſeparabilia* to the office, and yet not of the eſſence, I meane, for execution of the office.

The office ſynce the conqueſt hath long continued by deſcent inhæritably in the family of the auncient earles of Leyceſter, and ſoe remayned, vntil it was tranſlated to the houſe of Lancaſter, after the death of Simon de Mountford; and by king Henry 4, of that houſe, when he obteyned the crowne, incorporated. For playner manifeſtation whereof it will ſerue well to the purpoſe, before the office itſelf be deſcribed, to ſhew the firſt inſtitution thereof,

and

and to recount in order the ſucceſſion of the officers, whilſt it paſſed inheritably.

I thinke it will not be denyed, that before the conqueſt this office was not heard off in England, and therefore, *hoc poſito*, it is plaine in our Engliſh chronicles, that when the conquerour came into this land, and with him many worthy perſonages, amonge the reſt [though not inferiour to the reſt] one ſir Hugh of Grentmeiſnell came with him, who was younger ſonn to Robert of Grentmeiſnell, a nobleman of Normandy. This Sir Hugh, in the Engliſh enterpriſes ſoe valorouſly behaved himſelfe, that the conquerour being once quiettly poſſeſſed of the kingdome, did very richly and honourably reward him for his former ſervices, not onely with the mannours of Pebewath, Mareſton, Quineton, Weſton, and Willcott, in Glouceſterſhire, but with diuers lands in Norfolk, Leyceſterſhire, Nottinghamſhire, and Suffolk, and married him to a great inhæritrix of noble family here in England, and at the ſolemnization thereof, gaue him the office [neuer heard of here before] of lord high ſteward of England. The ſaid Sir Hugh, and Adaliza his wife had yſſue, Petronilla, or Pernell, the firſt daughter, and Adaliza, or Alice, the ſecond daughter, who was married to Roger Bigod, a Norman, who had yſſue, Hugh Bigod, firſt earle of the Eaſt-Angles, of whom the Bigods, earles of Norffolk were deſcended. All the inheritance of the ſayd Sir Hugh Grentmeiſnell was diuided betwixt thoſe two daughters, ſauing that in the particular, the lordſhip of Hinkley, and office of high ſtewardſhip of England fell to Pernell, being the eldeſt daughter, more than the younger had. The ſayd Pernell marryed Robert oue les blanches maines, or Robert with the white hands, the ſonn of Robert le Boſſu, earle of Leyceſter, ſonn of Robert of Beaumond, lord of Pont Adomare, and earle of Mellent, in Normandy, and brother to Sir Henry of Newburgh. The ſayd Robert with the white hands was the firſt of the houſe of Leyceſter in whom this office of ſtewardſhip tooke roote. He was a man valiant, a companion to Richard the firſt in all his Paleſtine wars, and at laſt ſlayne before

before Acon, in the yeare of Chriſt 1190, anno 2 R. 1. He had yſſue the famous warriour Robert Fitz-Pernell [ſoe called of his mother's name] who was alſo lord ſteward of England, he likewiſe following his father's ſteps, followed king Richard the firſt into the Holy Land, and in his returne home with the king was taken priſoner with him, and for his ranſome payd 2000 marks, for which he was conſtrayned to ſell his caſtle of Paſſy in Normandy, and dyed anno 1204, anno 6. Johannis, and buried att the abbey of Preux near Leyceſter. He hauing noe yſſue all his inheritance deſcended to his two ſiſters, Amicia the elder, and Margaret the younger, marryed to Saher de Quincy earle of Wincheſter. But the elder had the office of high ſteward, becauſe it was not partible, which was executed by Simon de Montford her huſband, brother to Almarick, earle of Eureux in Normandy, which Symon hauing the ſayd office *jure vxoris*, loſt boeth honour, land, and office for his diſobedience to king John, and was baniſhed the land. His lands were giuen to Randolph, earle of Cheſter; the ſtewardſhip the king reteyned in his owne hands, as annexed to his crowne by forfeiture: he being baniſhed, was ſlaine in the quarrel of the pope againſt the Albigenſes before Tholoſa, in the year 1219, anno 4 H. 3. But notwithſtanding this errour of the father, his ſonn Simon de Montford by his valiancy, and worthy feates of warr, ſoe obteyned the loue of his ſoueraigne king Henry the third, and the king's ſiſter, that he obteyned the king's favour, and her for his wife, and for augmentation of honour vnto him was reſtored vnto the dignity of the earldome of Leyceſter, and ſtewardſhip of England. But ſuch was the diſaſtrous fortune of this man, that in the new begunn variance betwixt king H. 3. and his nobles, for not obſeruing the new decrees att Oxford, being choſen captaine, for the nobility he tooke the king priſoner; but the prince his ſonn eſcaping, renewed the warre, and ſlew this Simon anno 1263, 48 H. 3. ſoe that though he had yſſue Simon, Guy, and others ſonns, yet they neuer enjoyed this office of ſtewardſhip, or earledome of Leyceſter;

ceſter; the office was giuen after [as I take it] to Edmund, earle of Lancaſter, and ſoe remained in that houſe, till it was incorporated in the crowne in king Henry 4. But I muſt not forgett a memorandum in the tyme of king Henry 3. Before this caſualty there was contention betwixt this Simon and Roger Bigod deſcended from Adaliza aforeſayd, att the coronation of queene Elianour, for the office of high ſteward, but it was allotted vnto this Simon in reſpect that he had giuen to Roger for his right therein, tenn knights, or knights fees, ſeauen and an halfe whereof he had payd, and the reſt was ready to pay, which being confeſſed by Roger Bigod, he was barred by the king's owne doome and judgement, &c. For the office itſelfe thus much.

In tymes paſt there was wont to wander throughout Normandy a certaine juſticer, who was called the prince's ſeneſchall, or ſteward, and what belonged vnto his office, may beſt appeare in the old cuſtomary booke of the dutchy of Normandy. And I doubt not, but it will be agreed, that what belonged vnto that office, muſt needs alſo be attributed vnto this, the very ſame gouernment and office being planted, and executed here in England: among many others I will cite but theſe few.

1. That this office is vnder and immediately after the king, to ouerſee, and gouerne the whole kingdome, and all the offices of juſtice thereof, boeth in tyme of peace and warre.

2. If any complaynt be made either to the judges, or to the king, and the complaynant be not able in due ſeaſon to obteyne remedye, he is bound to receaue their complaints, and keepe their petitions till the next parliament, and to call judges to account that delay or deny juſtice.

3. If the king haue euill councellours, ſuch as be hateful to the people, he is to aduiſe him thereof, and to uſe his beſt endeavour for their remoue, as it happened to Goodwyn, earle of Kent, in the tyme of Edward the confeſſour; the like to Hubert de Burgo, earle of Kent, in the tyme of king Henry 3. the like to Peirce Gaueſton in the days of Edward the 1ſt, yea, their authority ſtretcheth to a little larger ſize than this,

whereof

whereof it will more plainely appeare in an auncient manuſcript diſcourſe, intituled, *hic annotautur, quis ſit ſeneſchallus Angliæ, & quid ejus officium,* being in the hands of ſome antiquaryes.

It belongs to his office to limitt and bound townes, and villages, and to cauſe ſtreetes, paths, and highwayes, to be ſett in their auncient place, and thoſe which be ſtopped, to be opened. 4.

After the death of the prince, he keepeth court in the king's hall judicially, to receaue petitions of ſuch of the nobility, and others, as by reaſon of their tenures clayme to doe ſeruice at the new king's coronation, as did John duke of Lancaſter, earle of Leiceſter, high ſeneſchall of England att the coronation of king Richard 2. and Thomas Percy, earle of Worceſter, as ſubſtitute and deputy to Thomas the king's ſonn, being then very young, att the coronation of Henry 4. Sithence that tyme the office hath bin extinct in the crowne, and experience ſheweth, that vpon the arraignment and tryall of any peere of the realme vpon the indictment of treaſon, or felony, the king uſeth to graunte the office of ſtewardſhip of England, *pro illa vice tantum,* to ſome peere of the realme by letters patents. Thereupon he directeth forth a precept to the juſtices, before whom the indictment is taken, willing them to certify the ſame indictment att a day and place by him aſſigned; and doeth likewiſe direct another precept to one of the ſerjeants att armes, for the ſummonition of the peeres againſt the day of tryall. The like precept doeth he alſo direct to the lieutenant of the Tower, for bringing forth the peere being priſoner to tryall. Before 20 Henry 3. a precipe did lye for tittle of land againſt the king, but whither the writ ſhould be awarded vnder the teſte of the ſteward, or the conſtable, quere. By the ſtatute of 33 Henry 8. cap. 20. for due proceſs to be had in high treaſons in caſes of lunacy or madneſs; if any peere of the realme after treaſon committed, and confeſſed before any of the king's councell, doe fall lunatick, yet there ſhall be ordinary proceedings to, and in his arraignment, as if he were *compos mentis.* 5.

And in a charter of confirmation of king H. 3. dated 26 Maijanno 11 H. 3. to the abbey of Glaſtenbury, amongſt other witneſſes in the teſte is put *teſte rado filio Nicholai ſeneſchallo noſtro.*

De ſeneſchallſia domus regis.

For the explayning of the ſecond member of my former diuiſion of the generall queſtion of ſtewardſhip, the old booke of record called *domus regis angliæ*, preſerued in the counting houſe of the houſehold, can beſt teſtify. And becauſe this office [as I take itt] runns not in inheritance, but ad libitum regis, I will onely ſpeake of the nature of the office, and the office itſelfe.

1. I take it, the ſteward of the king's houſehold receaueth his charge of the king's high and proper perſon, and the houſhold ſtaffe, in theſe words: *Seneſchall tenex le baſton de noſtre mayſon.* By which forthwith he is alſo ſteward of the Marſhallſey, that is the court of the houſehold, of which he is a judge of life and limbe. And the treaſurer, comptroller, coffererer, two clerks of the Green-cloth, and the chiefe clerks of controllment, ſitt at the boord of Doome or Green-cloth with him in the counting-houſe, but as recorders and witneſſes of the trueth, himſelfe being as judge, commander, and guyder of the whole houſe.

2. He is to be ſerued, except in the king's chamber, or in his preſence, couered, but to haue none aſſay.

3. Noe commandment nor charge ought to be giuen by any officer in court without his notice, and aſſent firſt had, and in the houſehold rules and judgments he repreſenteth the king's eſtate, and his ſtaffe is taken as for a commiſſion.

4. He may annul ſome cuſtomes of the houſehold [ſaluis pro honore, & proficuo regis] by aduice taken at the Green cloth counting-boord.

5. Of auncient tyme he had daily in the Hall eating, a chaplaine, two ſquires, foure yeomen, and in chamber daily for his breakfaſt, meate, and liuerye for all night, eight loaues, foure meſſe of great meate, two rewards of roaſt, two pitchers of wine, ſix gallons of ale, and from Allhallowntide till

till Eaſter, one torch to attend upon himſelfe, one tortois to fetch his liuery by, three perches of waxe, ſix candles of waxe, eight candles of tallow, foure faggots, litter, and ruſhes all the yeare of the ſerjeant vſher of the hall and chamber, and after winter ſeaſon foure ſhides, two faggots, and when him liſteth to haue more largely in any thing, then his chamberlaine, that doeth fetch and receaue it, muſt record thereof by tally, or bill in the counting-houſe, and of the counting-houſe for his fees att Eaſter and Michaelmas twenty marks, and for his robes ſixteene marks, and for his napery att the foure annuall feaſts three pieces of great linnen cloth in the great ſpicery, or elſe in money thirteene pounds one ſhilling and foure pence.

This ſteward repreſenteth the ſtate of an earle, and by 6.
the ſtatute of the 21 of E. 3. cap. 21. in reſpect of diuers abuſes committed by the king's butlers and takers of his wine, it was enacted, that the ſteward or treaſurer of the houſehold ſhould aſſigne warrant for wine for the king's majeſty's houſehold. And the ſtatute of the 27 of E. 3. cap. 8. If any plea happen touching matters of the ſtaple, and concerne any of the houſehold, the ſteward or his lieutenant, and the marſhalls of the houſehold, ſhall be with the mayor of the ſtaple, to ſee that right bee done, &c. In anno 3. H. 7. cap. 13. the compaſſing of the death of any councellour of eſtate, ſteward, treaſurer, or comptroller of the houſehold is made felony, and judgment to be giuen, and execution done accordingly, and there is layd downe the manner of proceeding, to impannel a jury of the king's ſeruants in checque roll, &c. Another ſtatute was made 15 H. 6. cap. 1. touching pleas to be holden before the ſteward of the houſehold, but nothing elſe touching the authority. I have ſeene the very plea in 18 E. 3. [when Glaſtonbury was within the verge, and the king lay thereabouts] of the libertyes, and allowance thereof vnder the ſeale of Ralph de Stafford then ſteward, the ſeale being a cheuron in a plaine feild with two lyons ſupporters, and ouer the ſcutcheon a lyon paſſant gardant, with this circumſcription:

ſcription: *Sigillum officij ſeneſchalli* [the reſt being broaken] and the ſeale little bigger then a ſixpence, but att the end of the record written *in cuius rei teſtimonium Sigillum officii mareſcalli domini regis præſentibus eſt appenſum.* The like allowance was formerly made to the ſame abbey in 5 Edw. 3. before Radulphus de Neuill *ſeneſchallus hoſpitij, & mareſchallus*, &c. And the like alſo in 14 E. 3. The plea begins thus: *Placita aulæ ducis cornubiæ, comit. ceſtriæ, & cuſtod. Angliæ apud Glaſconiam, &c. coram Nicholam de Beech, Edmondam de Kendall militibus, & Hugone de Berewick juſticiar. ad diuerſas felonias & tranſgreſſiones in preſentia, & infra virgam hoſpitij dicti ducis audiend, & terminand. aſſignat. nomine ſeneſchalli & mariſc. in forma quæ dominus rex eſſet preſſus.* By which record it appears, that in the abſence of the king [being perhaps in France] Edward duke of Cornwall was cuſtos of England, and that the verge was holden as if he had been preſent, and that the ſtewardſhip of the houſehold was executed by deputy nomine ſeneſchalli, though a judiciall place. I fynd in an old deed, dated 8 Martij 21 E. 3. amongſt others, teſte Johanne de Gray de Rutherfeild *ſeneſchallo hoſpitij.* And in another dated 11 December anno 1 E. 3. teſte Johanne de Roos *ſeneſchallo hoſpitij noſtri.* But to make a perfect ſeries of the ſtewards of the houſehold ab origine, it lyes neither within my reading or ſufficiency to performe.

John Montacute ſeneſchallus Hoſpitij, anno 9 R. 2. 12° Januarii.

N° IV.

Of the ſame.

By Mr. HOLLAND.

1 Junij 1603.

I FYND in Geffrey of Monmouth, that in the tyme of Caſſibelan, Belin was his ſteward, and vnder him maſter Juſtice; for ſoe the tranſlation which I haue in Engliſh very auntiently written doth name him, whereby it doeth appear that the name of that dignity was uſed amongſt the Brittons.

At the coronation of king Henry the 4th, in the right of the earldome of Leyceſter, the king gaue the office of high ſteward of England, as belonging to the ſayd earldome, vnto his ſon Thomas duke of Clarence, and by reaſon of his tender age he was aſſiſted by Thomas Percy earle of Worceſter; and he ſate as lord high ſteward of England by the king's commandement in the white hall of the king's pallace of Weſtminſter, and cauſed enquirye to be made, what offices were to be executed or exerciſed by any manner of perſon on the day of the king's coronation.

In the tyme of king Richard the 2. the duke of Lancaſter was high ſteward att the arraignment of Richard earle of Arundell, and the earle being brought before him [the king being alſo preſent] the duke ſayd vnto the lord Neuill, take from the earle his girdle and his hood; and ſoe that was done; whereupon the articles of the appeale were reade, and the earle pleaded a pardon, whereunto the duke of Lancaſter replyed; Thou traytor, that pardon is reuoaked. The earle anſwered, truely thou lyeſt, I was never traytour. The king being preſent, ſaid to the earle, make anſwer to thine appeale. In the end the duke gaue ſentence againſt the earle in this manner. Richard, I John, ſteward of England, judge thee to be a traytour, and I condemne thee to be drawne, hanged, beheaded and quartered. But the

the king for reuerence of his bloud commanded him onely to be beheaded: where itt doeth appeare, that the ſteward may giue judgement and ſentence in the preſence of the the king.

When the king dineth in his chamber, the ſteward may dine in the hall vnder the cloth of eſtate, the ſame being rolled up aboue his head, and ſuch knights as doe wayte on the king may ſitt at dinner with him.

The ſtatute of 31 H. 8. which hath ſet downe the placing of great officers, doeth make no mention of the high ſteward. And therefore I referre his place and authority to be deliuered by them that haue ſeene more records thereof then I haue done.

JOSEPH HOLAND.

N° V.

Of the ſame.

By Mr. THYNN.

THIS office of ſteward is in Latine called *oeconomus, ſeneſchallus, comes & maior palatij*; in French *ſeneſchall, graund maiſtre del Hoſtell de roy*, or *prouoſt del palace de roy*, and in Engliſh *ſteward*. For the etymologie whereof there be diuers opinions, among which, one is of Tilius in his ſecond booke de Rebus Gallicis, who ſayth *ſeneſchallus* is compoſed of this German word SCHALL, ſignifying a ſeruant or officer, and of *Geſind*, which denoted a family, ſoe that *ſeneſchallus* is *officialis familiæ*. But Lupanus ſuppoſeth it in his ſecond booke *de magiſtratibus Galliæ*, to be deduced of this old word *Sen*, ſignifying *juſtice*, and *ſchalcum*, ſignifying *præfectum* or *gouernour*; ſoe that he ſhould be ſupreme in juſtice. Boeth which definitions doe aptly agree to the nature of his office, for he is ſupreme judge to adminiſter juſtice in the king's palace,

whereunto, att the firſt, was the onely reſort for juſtice, boeth of the houſehold and the realme. This office I make noe doubt to be as auncient, as ſince the tyme that kings, and familyes of houſehold, had being. And therefore leauing the Hebrews, Greeks, and Romans, we will draw neare home, and talke of the French, the Saxons, and our moderne Engliſh. Amongſt the firſt two familyes of the French kings, which were of the Merouingians and Carolines, this officer was onely knowne by the name of *comes*, or *maior palatij*; but in the third family of the Capetines, whoſe tyme yet continueth, though changed into the name of the familys of Valois and Burboun, this word *ſeneſchall* came in place for that officer. But how we ſhall apply theſe offices of the former age with the moderne, I know not; for if Polybius in his Roman hiſtory, when he treateth of the firſt couenant between the Romans and Carthaginians vnder the conſulls Brutus and Valerius, doeth excuſe himſelfe, that many parts of thoſe conditions were not vnderſtood of the moſt ſtudious and diligent antiquaryes, being but 353 yeares before his tyme, how much more may I excuſe myſelf in meddling with the ſignification and nature of words of one other language uſed aboue 800 yeares ſynce: and therefore if I erre in my diſcourſe, you muſt pardon it. But to proceed, as well as I can, I will leaue forreyne matters and come to our own home.

The Saxons had this officer, called in their own language *ſtowhere*, which is lord or gouernour of the houſe, place, or habitation; for ſo is this word taken, although *hame*, or as we now call it, *home*, doeth denote a houſe or ſtation. This *ſtowhere* was in Latine called amongſt the Saxons *oeconomus* [for the Saxons did much affect Greek words] being alſo termed *procurator aulæ & ſeneſchallus*. For the firſt, I find in an old charter of king Cuthred, dated 749, wherein he gaue the land of Cleere to the church of Wincheſter, that Athelardus doeth in his ſubſcription terme himſelfe *oeconomus* for *procurator aulæ*. Eſgarus, who was alſo *ſtallere* or *vexillifer regni* doeth

ſubſcribe his name to a deede of Edward the confeſſor, by this name of *Eſgarus, regiæ aulæ procurator.* And by the booke of ſaint Auguſtines in Canterbury, Haraldus was *ſeneſchallus* of Edward the confeſſor, and ſo was Hugoline boeth treaſurer, chamberlaine, and ſteward to Edward the confeſſor; for in that king's charter made to Randoulfe Peperkine of the hundred of Dauncy is witneſs the ſteward Howeline, as followeth in theſe words:

Witneſſe the biſhop Wolſtone,
And booke ylernid meny one,
And Sweyne of Eſſex our brother,
And teken him meny other,
And our Steward Howelyne,
that beſoughten me for him.

The Normans likewiſe had this ſteward by the name of ſeneſchall in their tyme; but although he was ſometymes called ſteward of England, yet he was but *ſeneſchallus regis* at the firſt, and ſo was Hugh Grentmeiſnell the firſt ſteward of England, hauing that name for diſtinction from the ſteward of Normandy, as had alſo the chancellours, and treaſurers, and other officers, being att the firſt onely termed cancellarij, and theſaurarij regis; but after for diſtinction-ſake, when the kings had France, Ireland, Gaſkoyne, &c. then came the names of chancellour of England, of Ireland, of Paris, and ſoe of other officers; the conſtables of England, were alſo ſo called to diſtinguiſh them from conſtables of Normandy; for notwithſtanding, that ſome affirme the Bohunes to be ſtewards of the houſehold to the firſt Norman king's, thereby to proue a difference, euen from the beginning of the Normans, betweene the ſteward of the houſe, and of England, becauſe the Bohunes had the one, and Grentmeiſnell the other, yet I haue ſeene a note to proue, that Bohune was ſubſtitute to Grentemeiſnell, which in continuance of tyme grew to be a primer office, as did the barons of the exchequer ſo called, becauſe att the beginning they were ſubſtitutes of the barons of the realme, cheife officers of thoſe places, vntill the tyme of King Henry 2.

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for from that tyme ſubſtitutes held the place appoynted by the king, and kept the title of barons, as were they, to whom they were ſubſtitute. But let theſe ſtewards then be diſtinguiſhed, as they are att this day [for I will not impugne, what cuſtom and tyme hath confirmed] we ſay that theſe two offices hauing diuers functions, muſt be ſeuerally ſpoken of, and therefore we will firſt ſpeake of the ſteward of England, and then of the houſehold.

Touching the ſteward of England, we will firſt ſpeake of the ſucceſſion, and inheritance, and after a little touch of ſome of the function, for itt will be ouer tedious to ſett downe all that I haue ſeene touching their office. The Succeſſion is this. Firſt, William Fitz-Oſburne earle of Hereford, was ſteward to William the conqueror; then Henry Bewclarke his ſonne, being after Henry the firſt, was ſteward alſo to the conqueror. Thirdly, the conqueror, as appeareth in the booke of Doomeſday, gaue to Sir Hugh Grentemeiſnell, younger ſon of Robert Grentmeiſnell of Normandy, the lands of Hinckley, Petworth, Merſtone, Queinton, and many other lands wtih the ſtewardſhip of England, as it is termed. He marryed a great inheritrix called Alicia, and had two daughters, the eldeſt married to Robert the third of that name, earle of Leiceſter, ſurnamed Blanchmaines, or White hands, who was ſteward of England in her right; from which tyme the ſtewardſhip went by inheritance into the houſe of Leiceſter and Lancaſter by that line; and the other, the ſecond daughter, was marryed to Hugh Bigott, firſt earle of Norffolke. Robert Blanchmaines thus poſſeſſed of the ſtewardſhip of England had yſſue by Parnell his wife, but he dying Robert Fitz-Parnell [ſoe termed after his mother] was ſteward of England, followed Richard the firſt in his Paleſtine warrs, and dyed anno 1204, leauing his two ſiſters his heires, between whom the whole inheritance was diuided in the tyme of king John. Amicia the eldeſt ſiſter was marryed to Simon Montford, younger brother to Almerick earle of Eureux in Normandy, and the ſecond ſiſter Margarett was marryed to Saher de

Quincy, earle of Wincheſter, to whom ſhe brought the moiety of all her father's lands. This Simon Mountford was in the right of his wife earle of Leyceſter, and ſteward of England, for that was allowed to him in the partition of the lands, and the matter adjudged afterwards againſt Hugh Bigott [who contended with Mountford for that office att the coronation of Queen Eleanor, 20 Henry 3.] but Mountford did not long enjoye the ſame, being baniſhed with his children for his contumacy, and his honour and lands beſtowed vpon Randolfe, earle of Cheſter, whom ſome affirme to haue bin alſo ſteward of England, although the king [as moſt proofes avouch] kept the ſtewardſhip of England in his owne hands. After the death of this Simon, ſome make Almarike his eldeſt ſonn to be ſteward; but I for this tyme receaue not that opinion, becauſe I know, he alwayes liued beyond the ſeas, and I haue ſeene the letters which he wrote to Henry 3. to inueſt his younger brother Simon in the earledome of Leyceſter; which ſecond Simon comming into England, and marrying Elianor the ſiſter of Henry 3. and widdow of young William, earle marſhall, was made earle of Leyceſter, and ſteward of England; but he rebelling againſt the king, loſt both his earledome and ſtewardſhip, which Henry 3. gaue to Edmond his younger ſonn, earle of Leyceſter and Lancaſter: from which tyme it continued in that houſe, vntil it was drowned in Henry 4. king of England, ſon of John of Gaunt, laſt earle of Leyceſter and Lancaſter, except that in the interim, Edmund of Langley was for a little tyme made ſteward, as ſome haue thought. But after that Henry 4. had the crowne, it was wholy excluded from ſucceeding by inheritance, and then beſtowed att the king's pleaſure, and that for certaine tyme euen to our age, as occaſion ſerued. For the authority of this high ſteward, becauſe it is almoſt vnlimitable, and ſoe abſolute, as it is almoſt equall with the king's power, I will referre you to the cuſtomary of Normandy, where much of his office is ſett downe, and to ſome other large diſcourſe thereof, which I haue, and cannot without ouermuch tediouſneſſe bring to ſuch

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compendiouſneſſe as I would, and therefore doe omitt it, ſeeing therein is att large deliuered, whatſoeuer he is to doe in the king's abſence and preſence.

Touching the ſteward of the houſehold, it is as auncient as the conqueſt, as ſome will haue it; touching which, I haue before ſhewed my minde, and therefore will onely now ſpeake of his creation, out of one old booke of mine, for the king's houſehold, made in the tyme of Edward 4. and called *domus regis Angliæ*, which affirmeth, that his creation onely conſiſteth, by the high and proper perſon, the king's deliuering to him the houſehold ſtaffe, with theſe words, *ſeneſchall, tenez le baſtone de noſtre Maiſone*. His allowance in court for his juriſdiction, with all other things belonging thereunto, I ſhall omitt, boeth for breuity, and becauſe I haue not leyſure to write them, not doubting, but that ſome of this learned aſſembly will remember them, eſpecially the lawyers, who fynde much thereof in Stanford, and in the ſtatutes of Edward 3. Henry 7. Henry 8. Onely I will touch this, that he alſo by the deliuering of the ſtaffe, is ſteward of the marſhallſey, and ſo in all patents made by princes, he is *ſeneſchallus, & marcſchallus hoſpitij noſtri*. Laſtly, I will note, when this name of ſteward did ceaſe, what new name was induced therefore in the meane tyme, and when it was again reuiued, all which happened in this our later age. For Charles Brandon was made ſteward with a French title of *le grand maiſtre del hoſtell* by king Henry 8. John earle of Warwick by patent was made *magnus magiſter hoſpitij, ſive le grand maiſtre del hotel le roy*; for ſoe be the words of his patent. 4. Edward 6. Pawlett lord ſaint John after had the like ſtile and title in the tyme of Edward 6. and ſoe this name continued but ſhort, during the tyme of Henry 8. and Edward 6. for queene Mary did againe make Henry, earle of Arundell, lord ſteward of the houſehold by that name, who ſurrendered the office in 4 & 5 Phillippi & Mariæ, which name did euer after continue during the reigne of queene Elizabeth. Thus omitting to ſett downe, as willingly I would, if leyſure ſerued, a note of ſuch ſtewards

of

of the houſehold, as I haue collected by record from the tyme of king John. I committ this diſcourſe to your favourable judgements,

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N° 6.

Of the ſame.

By Mr. TATE.

4 Junii 1603, anno 1 regis Jacobi.

IF the limitts of the queſtion exceede not the ſtrictneſs of the words, and we be holden to the antiquity of a ſteward, I meane to this name, and not to the office, few words will expreſs all in thought, and neſcio be the ſumme of my ſpeech; for I know not ſoe much as what language the word is: ſuch an officer as is meant by the word, the Græcians had, whom they termed Οἰκόνομος; the Romans *diſpenſator*, or *villicus*; the old Franks *ſeneſchall*; the Germans *ſheffner*, and *hanſeveewatter*; the Britons *Pentuly*. Amongſt the Saxons I find not the word ſteward, but *Gereve*, ſauing in the ſuppoſed charter made by Edward the confeſſour, of the forreſt of Eſſex to Randol Peperking, wherein Howelin his ſteward is ſayd to be a wittneſs, which if I had not ſeene allowed of record, I ſhould cleerely haue held it to be forged; but admitting it to be an old Engliſh, or Saxon word, what ſhall I ſay, it doeth ſignify, or how it is compounded? I dare not ſay of *ſtowe hard*, *ſtowe* for *beſtowe*, or *lay forth*, and *harde* for *horde* a treaſurer, as though it countervaild *diſpenſator*; or of *ſtore-warde*, the preſeruer of the ſtore, and prouiſion of the houſe. If I ſhould ſay, it came from *ſty-warde*, a houſekeeper, to proue this by two wittneſſes, I ſhould bee forced to fetch one out of the hogſtye, and the other from Winken de Word, in whoſe promptuarum parvulorum, *ſty* is ſayd to be, *caſa* as well as *hara*. I ſhould gueſs it to be a ſingle word, cor-

corrupted in pronunciation by addition of the letter D, as we often heare ſome pronounce vilde, inſtead of vile; ſo *ſtuerd* for *ſtuer*. *Stuer* is an auncient Saxon word, at this day pronounced *ſtyre* with vs. *Styern*, or *ſterne*, which is *in latine gabernaculum navis*, and may metaphorically be taken for ſuch ruler of the houſe, as a ſteward is.

Some men are of opinion, that beſides the common ſtewards in leetes, court-barons, and boroughs, there were in auncient tyme, two diſtinct officers of ſtate in this realme. The power of the one extending itſelfe ouer the whole kingdome, and the other commanding onely in the verge of the king's houſehold.

Touching the antiquity of ſuch an officer, whoſe authority ſhould exceed the limitts of the verge, I will joyne with any in finding an ignoramus; for I thinke, there was not euer of antiquity any ſuch officer in England. In Normandy there was a generall ſeneſchall ouer the whole dutchy, who continued his office, till Normandy was ſeized by the French king; and I find, *term. paſche* 10 & 11 *Johannis regis*, that William Fitz-Rafe then held that place, and had power to hold plea of freehold within that dutchy. And in 32 Edward 1. an office was found at Edenborough for Riccardſton's lands, which were holden of the ſeneſchall of Scotland; and though John de Ricardſton was ſlain att Dunbar in a battle againſt king Edward 1. yet his lands eſcheated not, but deſcended to Mathew his ſonn, and the tenure continued of the ſeneſchall. I will not deny, but ſome writers may be produced, which make mention of *ſeneſchallus Angliæ*, or *ſeneſchallus regis Angliæ*, or *magnus ſeneſchallus*; but I vnderſtand thereby noe other, then *ſeneſchallum hoſpitij domini regis*. Examine the etimology of this officers name in any language, and you ſhall fynd the office had its originall in the houſehold, and in the ſame onely was exercible. Οικονομος commeth of οἶκος a houſe. *Seneſchallus*, or *ſeneſcalk*, which is compounded of *ſine*, or *cheſine*, that is *familia*, and *ſcalk*, which is *miniſter*, as Cornelius Kilianus doeth very well obſerue. *Pentuly* was cheifeſt of the foure and twenty officers in the Britiſh king's

king's houſe, and ſoe the word itſelfe importeth, *pen*, ſignifying *caput*, or *principalis*, & *teuly*, *familia*. Beda calleth this officer *major domus regis*, and a late ſtatute intituleth him, the lord great maſter of the houſe-hould. *Diſpenſator* is a name proper to the ſteward of an houſehold, and neuer was belonging to the ſteward of a realme. In Fleta, and in auncient ſtatutes, I finde mention made of the office of *ſeneſchallus hoſpitij*, and of *comes ſeneſchallus*; but of this other great officer ouer all the land, I find not a word in them, or any other authenticall authour before the tymes of king Edward 3. I confeſs, I haue ſeen a diſcourſe beginning thus; *hic annotatur, quis ſit ſeneſchallus Angliæ, & quid ejus officium?* wherein is giuen him a perpetuall ſuperintendency ouer the king's priuy councellours, and ouer all the officers, and miniſters of juſtice in this land; but of the trueth and ſincerity, thereof I am very ſuſpitious, for the examples added, to confirme the theorick thereof by practice, the hiſtoryes diſproue. And if he be made *ſuperuiſor, and rector ſub rege, and immediate poſt regem totius regni*, what place is left for the chiefe juſtice of England, who ſas the [Red-booke of the exchequer ſayth] *eſt primus in regno poſt regem ratione fori.*

I will grant, there hath bin an officer in the high court of Parliament, whoſe authority, as ordinary experience confirmeth, extendeth to the calling of the houſes, and giuing them their oath, who is a principall or cheife judge in all judgements giuen in parliament, either in writts of errour, demurrers, or attaynders, whom the lords without the aſſent of the commons are ſayd to chooſe, 1 Henry 7. 19. But that choyce, I ſuppoſe, to be nothing elſe, but their aſſent to the king's nomination. I doe not perceaue any reaſon to induce me to yeald that this officer was any other than *ſeneſchallus hoſpitij*, before whom, I thinke, all claymes were made for ſeruices to be done at the coronation. For though this office, till the tyme of king Henry 4. reſided in the familyes of the earles of Leyceſter, and at king Richard the ſecond's coronation, John king of Caſtile, and duke of Lancaſter, executed the ſame,

as tenant by the curteſy of the earledome of Leyceſter, by reaſon of Blanche his deceaſed wife, and that Winterſhul, Fitz-John, Crombwell, Devereux, Percy, &c. wrote themſelves *ſheneſchallos hoſpitij regis*, in the tymes of Henry 3. Edward 1. Edward 2. Edward 3. and Richard 2. yet I take it that theſe executed that place, as deputies to the other, and not in their owne rights.

Statute 1 Elizabeth 3. Thomas counte de Lancaſter, & de Leyceſter, Seneſchall d' Angleterre.

Synce the tyme of king Henry 8. the kinges and queenes of this land have uſed hac vice, to make a lord ſteward, not by patent, as I take it, but *traditione baculi*, to arraigne the nobles of the land out of parliament, and to try them by their peeres, as may appeare by the 13 Henry 8. when the duke of Buckingham was attainted; but touching the beginning of that uſe, I haue noe opinion fauouring of antiquity. If any man inſiſt upon the firſt caſe in 1 Henry 4. I deſire him, to ſhew mee any record thereof, or of the like ſoe auncient, as that: whether he euer ſaw a printed yeare booke of king Henry 4. wherein that caſe was not? whether he euer ſaw it in any auncient written copy of king Henry 4. yeares? And in what king's tyme that caſe was firſt printed, and publiſhed? and whether the learning in our bookes touching that kind of tryall by commiſſion, and out of parliament, be auncient, or puiſne to the firſt ſetting out in print of that yeare?

The office of ſteward of the king's houſehold, ſynce the office of cheife juſtice of England ceaſed, is growne greater, by reaſon he ſupplyeth his place in many things, as Fleta lib. 2 cap. de differentijs curiarum, & de Placitis aulæ declareth, from whence for the moſt I deriue, what I ſhall ſpeake concerning him.

To this ſeneſchall, beſides his office in houſehold affayres, and the gouernment thereof, which appeareth in a booke made in king Edward 2. tyme called *Domus regis Angliæ*, and in another of that name made in the tyme of king Edward 4. boeth which I have copies off; to this ſteward, I ſay, it appertayneth in the courts held in the king's hall, to heare, and determine in ſuch ſort, as juſtices in Eyre uſed to doe, all matters concerning the peace done within the verge,

which in auncient tyme conteyned twelue leagues round about the houſe, where the king made his aboad. Of criminal cauſes, and perſonall he might hold plea without writt; and ſoe he might of freehold, but not without the king's writt.

For ſpeedyer execution of juſtice, he might cauſe all aſſiſes depending in any county within the verge, all appeales there begun, and not ended, and all priſoners with their cauſes of deteyning, to bee brought before him. If he wanted tyme by reaſon of the king's remoue, to determine thoſe cauſes, either begun firſt before him, or after remoued into this court, he might adjorne them into the king's bench, to the aſſizes, or what court elſe he thought good.

This power, when there was a cheiſe juſtice, was deriued from him, for in his name he ſent all his writts, but ſynce the office of cheiſe juſtice of England was diſcontinued, he hath in part exerciſed his authority, and ſendeth out writts in his owne name.

In his proceedings he was to hold his courſe; firſt to heare cauſes criminall, after that injuryes complaynd off, which being diſpatched, he proceeded to aſſiſes, and juryes, and laſt of all decided controuerſyes ariſing from contracts betwixt man and man.

This was the ordinary juriſdiction of the ſteward of the houſehold.

Beſides which, he had a juriſdiction extraordinary ariſing cheifly from the permiſſion and aſſent of others; of which ſort I take the caſe of Ingelram de Nugent, 14 Edward 1. to be. This Ingelram was taken in the king of England's court in Paris with a ſiluer veſſel, which he had ſtollen from the king. The French king's caſtellane would haue tryed him for this fact in the courts of France; but king Edward 1. claymed, and had allowed to him, after long debate, the prerogatiue, and priuiledge of his houſehold, and in 17 Edward 1. William de Leſne being appealed for robbery by

by him done in the king's court in Gaſcoigne, could not avoyde the appeale, becauſe it was done when the king was in another's kingdom.

Another ſort of his extraordinary juriſdiction was, when certaine perſons hauing agreed to do ſome act, voluntarily by their writings ſubmitted themſelues to the deſires of the ſteward or marſhall of the houſehold: if it were accordingly performed, this contract, were it made within the verge or without, was determinable before the ſteward of the houſehold, whereof Fleta citeth a cauſe or caſe betwixt Ranulph de Folſhank, and Henry de Wootten 15 E. 1.

N° VII.

Of the ſame.

By Mr. DAVYS.

I THINKE the office to be auncient, but doe not fynd that it was an office of continuance in the officer to whom it was granted, as the other great offices of high conſtable, high marſhall, and great chamberlaine of England were, which haue all bin offices of inheritance. But the grant of this office was alwayes [for ought I can learne] in nature of a commiſſion, which as ſoone as it was executed hac vice, was determined. For it was euer granted to ſome great perſonage, either vpon the arraignment of a peere, or to decide controuerſyes att the king's coronation for performances of theſe ſeruices onely, which being done, the office did ceaſe, whereof he made demonſtration by breaking his white rod.

First by inheritance, after by commiſſion.

Notwithſtanding 1 H. 4. it is noted in our yeare booke vpon the arraignment of Holland earle of Huntington, that becauſe the office of ſteward of England was then voyd, the king granted the office to the earle of Deuonſhire to doe right to the ſaid earle of Huntington, and commanded by the ſayd commiſſion all the lords to be attending on

him: Which note that the office was then voyd, doeth ſeeme to imply, that it had bin an office of continuance, and that it was then voyd by accident; yet in the ſame yeare the ſame king had granted the office of high ſteward of England to Thomas his ſonne att his coronation. For the antiquity, perhaps it hath bin an office at the coronation euer ſynce the conqueſt; for the office is French: But for his power to arraigne a peere of the realme, it cannot be more auncient then Magna Charta, which ordaynes the tryall *per pares* in theſe words: *Nullus liber homo capiatur, vel impriſonetur, vel vtlegetur, aut exuletur, aut aliquo modo deſtruatur, nec ſuper eum ibimus, nec ſuper eum mittemus, niſi per judicium parium ſuorum, vel per legem terræ.*

Touching his commiſſion att the coronation, it is diuers from that which he hath for the arraignment, and therefore, though the name bee one, viz. lord high ſteward of England, yet the offices are in nature altogether diuerſe. For att the coronation he hath power to decide differences that ariſe touching places of ſeruice at the coronation, whereof there is a notable precedent, 1 H. 4. where Thomas duke of Exceſter, the king's ſecond ſonn, was made lord high ſteward of England, aſſiſted by the earle of Worceſter, which office the commiſſion notes to haue bin belonging to Henry the 4th before he was a king, in right of his earledome of Leyceſter.

Touching his commiſſion for the arraignment of a peere, he hath power to make a precept to his ſerjeant att armes, to ſummon twenty or more lords of parliament, and the like to the conſtable of the tower, for the priſoner to appeare before him att the day of the arraignment. At which day he hath a court erected in the king's hall, where boeth the ſerjeant and the conſtable returne their precepts. Then the lord high ſteward declares the cauſe of the aſſembly, and the clarke of the crowne reades the enditement, to which the peere pleades, and putts himſelfe to be tryed by God and his peeres. Then the king's councell giue euidence, which being done, the priſoner is retired from the barr;

barr; the lords conſult of their verdict, and being returned the lord ſteward demands of euery one his verdict particularly, beginning att the youngeſt, and if the greater part acquitt or condemne, he giues judgement accordingly.

Thus much for the lord high ſteward of England; but I fynd other officers called lord ſtewards of an inferiour degree, whereof one is an office permanent, and the other momentary, as the office of lord high ſteward of England.

The firſt is the lord ſteward of the king's houſehold, which is euer an office granted for life, and is the principal judge of all matters ariſing within the verge; for all pleas that are decided in the Marſhalſey are tried before the ſteward and marſhall, as it is expreſſed in all the old ſtatutes; and by the ſtatute of 15 E. 2. the ſteward of the king's houſeold is to make exſtreates into the exchequer of all fines in the Marſhallſie.

Moreouer by the ſtatute of 3 H. 7. the lord ſteward of the houſehold, with the treaſurer and comptroller, haue power to arraigne and try any of the king's ſeruants in the check rolle, for any conſpiracyes againſt the perſon of the king.

The name of this officer was changed by act of parliament 23 H. 8. and called *grand maſtre del hoſtell de roy*, when that office was granted to Charles Brandon duke of Suffolk; but afterward 1 Mar. it was reſtored to the auncient denomination, when it was giuen to the earle of Arundell.

The other office of lord ſteward, which is momentary, is the lord ſteward, which is choſen in the higher houſe of parliament, before whom writts of errour are brought to reuerſe judgements of the King's Bench. Vid. 1 H. 7. Flowerdeue's caſe.

Nº VIII.

Of the ſame.

By Mr. CAMDEN.

WHOM we call in Engliſh *ſteward*, in Latine is called *ſeneſchallus*, the etimology whereof in boeth tongues is but conjecturall, yet boeth certainely are deduced out of the old German tongue, which is the eſpeciall matrix of languages in this part of the world. *Seneſchallus* is deriued by ſome ridiculouſly from the Latine word *Senex*, and the German *ſchalc*, which ſignifyeth a *miniſter*, as though it ſhould import an auncient *ſeruitour*; by others from *ge-ſind-ſchalc*, as the *ſeruitour* of the family. Steward is ſuppoſed to be compoſed of two Engliſh Saxon words *ſted or ſtith*, a *place*, and *ward*, as if it ſhould ſignify the *guardian* and *conſeruer* of the place.

The word *ſeneſchallus* I haue not found more auncient then in *legibus Alamannorum*, *titulo* xii. and the word *ſteward* I haue not reade in the Saxon age, but *hus-geriff* in like ſenſe; yet the neceſſity of the function aſſureth vs they had the office in vſe, and Eſgarus, who was by dignity *ſtallher* to Edward the Confeſſour, amongſt the teſtes in a charter made by the ſayd king to Waltham Abbey, is ſtiled *rigiæ procurator aulæ*, which ſeemeth to allude to the office of a ſteward; and the French antiquaryes conſent in this, that after Pepin came to the crowne he aboliſhed the maires du palais, and ſubſtituted in their roome the ſeneſchalls, to heare cauſes and differences happening in the court, and to giue order for domeſticall expences and other matters. In the tyme of William the Conqueror, Hugo de Grantmeiſnell is noted to haue bin the firſt ſteward of England, and that he held the honour of Hinckley in the county of Leyceſter by that ſeruice: his daughters were marryed, one to Robert earle of Leyceſter, the other to Roger Bygott, between whoſe ſucceſſors was a long contention for that office, which was not then limited in the prince's

prince's pallace, but was ſoe extended, as it had juriſdiction in ſome caſes farr larger, and, as ſome thinke, through the whole realme; when as Robert Blanchmaines earle of Leyceſter, in reſpect of this office, is called by Johannes Sariſburienſis in Polycratico, *proconſul totius Britanniæ*. Neither doe I thinke, that by this office he was *juſticiarius* or *juſtitia Angliæ*; for I fynd others not deſcended from Grantmeiſnell to haue borne that office, as two Baſſetts, Ridell, Clinton, and yet I ſee in Robert de Monte, anno 1160. Robertus de Novo Burgo is called *dapifer* and *juſtitia totius Normanniæ*.

Whereupon I thinke good to note, that I haue obſerued, that *dapiter & ſeneſchallus*, *dapiferatus & ſeneſchalſia* in that age were all one: which appeareth by the charter of king H. 2. and R. 1. his ſonn. For whereas king Henry the ſecond granteth to Hugh Bigott *dapiferatum ſuum ita libere, & quiete habendum, ſicut pater ejus Rogerus melius, & liberius tenuit tempore regis Henrici aui mei*. King Richard the firſt reſtored this office to Roger his ſonne in theſe words: *Sciatis etiam, nos reddidiſſe ei ſeneſchaltiam ſuam & hæredibus ſuis ita libere, integre, & honorifice habendam, ſicut Rogerus Bygott Avus ſuus, & comes Hugo pater ſuus habuerunt*: ſoe Alanus de Chrona, which in one place of Ingulphus is named *ſeneſchallus regis*, in another place by the ſame author is named *dapifer regis*; and William Courcy, which in his owne euidences is called *dapifer regis*, by Houeden p. 312. is called *ſeneſchallus regis*. So that it is to be noted, that beſide *dapifer* or *ſeneſchallus Angliæ*, the kings had many *dapiferi*; for in a charter of king Richard the firſt I fynd, that Stephanus de longo Campo, & Rogerus de Pratello, intituled themſelues *dapiferi*.

Of the long contention before mentioned for the ſteward-ſhip of England, I find this in the Red booke of the exchequer, fol. 222. *anno viceſimo Henrici regis filij Johannis regis, coronatione reginæ Alienoræ filiæ comitis prouinciæ apud Weſtmonaſter. ſeruiuit eo die in ſeneſchalcia Simon de Monteforti comes Legeceſtr. cui de jure competit illud officium,*

ficium, licet contradiceret Rogerus de Bigott comes Norfolc: qui dicebat, ſuum eſſe jus illud a veteri. Ad quod reſpondit dictus Simon, quod tempore regis Johannis facta inter eorum prædeceſſores contentione ſuper hoc & hoc modo pacificati. Quod comes Legeceſtriæ dedit comiti Norfolc. ſeruicia decem militum, & comes Rogerus Norfolc. remiſit totum clameum ſuum, quod habuit in ſeneſchalſia. Ad quod replicauit alius, quod adhuc reſtabant ei aſſignanda duo Feoda, & dimid. de prædictis decem feodis. Ad quod reſpondit comes Simon, quod ſecundum legem terræ bene potuit conſequi ſua arreragia aliâ in curia domini regis, nec propter hoc debuit impediri, maxime cum confitetur, cum Rogero illam conuencionem, & ſe ſeiſitum de ſeptem feodis militum, & dimid. per illam conuencionem: & ſic libere ſeruiuit comes in ea die. Neuertheleſs what were the ſeruices and fees due to this office, were att this tyme ſoe vncertaine, that a commiſſion was directed, as appeareth by the records in the Tower, to Lora counteſs of Leyceſter, then an anchoreſs at Hakington in Kent; but what ſhe certifyed thereupon doeth not appeare; and afore that tyme there was the like ignorance in this caſe in France, as appeareth by the abbey booke of Anjou, when Foulke earle of Anjou was reſtored by Lewis the younger to the high ſtewardſhip of France, which was belonging by hereditary right to the houſe of Anjou, from whence our kings of England are deſcended.

This honour, after the attainture of Simon Mountford, was giuen to Edmund earle of Lancaſter, vntill Thomas of Lancaſter duke of Clarence, ſonn to king H. 4. After much tyme, the kings att coronations and arraignments of honourable perſonages, aſſigned att their pleaſure, one or other *Ad omnia & ſingula quæ ad officium ſeneſchalli Angliæ pertinent hac vice tantummod' facienda & exequenda, in modo, & forma antiquitus debitis & conſuetis*; as we fynd in the records.

Nº IX.

Of the ſame.

By Mr. AGARD.

I SUPPOSE the ſame word ſteward to ſtand vpon the Saxon language rather then vpon the Latine or French: The Latine word being *villicus* or *diſpenſator*, ſometyme borrowing of the French *ſeneſchallus*, and the French word *ſeneſchault*, as being the moſt auncient and pre-eminent in authority, where command is vnder the prince; the Latine words ſignifying a *diſpoſer* or *governour* of a family vnder the maſter of an houſe, or owner of lands or huſbandry, ſoe as he is called alſo *oeconomus*, *tanquam frugum & omnium, quæ domus poſſidet diſpenſator*. But for the naturall ſignification of our language, I take it to be deriued from the Saxon, the later ſillable *ward*, ſignifying *watchfull* or *carefull* ouer any thing; for ſoe in like ſenſe I fynd it expounded by an old booke of Canterbury [out of which I wrote the expoſition of ſundry Saxon words by alphabet] *w ard, id eſt, cuſtodia maris*. Likewiſe in Doomeſday is this word *ineuuard*, the booke itſelfe expounding the word *vigil*, that is to ſay, a *watchman* or *warderer* appointed to attend the ſherriffe, and other the king's officers: and thus, *& inuenit, viz. duos ineuuardos*. Againe, *& in ſeruicio regis inuenit ineuuardum, vel iiijd.*

Now to come to the fore part of the word, which is *ſtew*: lett it not ſeeme ſtrange among you, I pray you, that I fetch that from an auncient Engliſh or Saxon word, which ſignifyeth a ſmall poole or pond, into which, after a man hath ſewed his great ponds, all ſuch fiſh as is meatable fit to be eaten, is put, whence the good man of the houſe, or his ſteward may readily take it att his pleaſure to be dreſſed; ſo as he may well be called the ſtorekeeper or wiſe diſtributor of the ſame. And thus is this word *ſtew* taken in, through all the ſhires of Stafford, Derby, and

Cheſter, ſo as I am reſolued this to be the right ſignification of the word ſteward.

Now for the antiquity thereof. Before the conqueſt the firſt mention of it is in Edward the Confeſſour's tyme in his charter for the keeping of Waltham forreſt, beginning thus: Ich, Edward, king, &c. Witneſſe Buſhop Wulſton, and booke many ylernid many one,

> And Sweyn of Eſſex our brother,
> And teken him many other,
> And our ſteward Houelin,
> That beſoughten me for him.

This *Houelin* ſhould ſeeme to be a man of great authority about the king, in that he intreated for the man, and alſo was a witneſſe to the charter.

After him I fynd William the conqueror created Hugh de Grantmeiſnell high ſteward of England, and gaue him the honour of Hinkley in Leyceſterſhire, as is mentioned in an old rolle in the king's treaſury, wherein is ſpecifyed the pedegree of Robert de Mellent earle of Leyceſter, who had yſſue Robert Boſſu, who had yſſue Robert oue les Blanchmaines, *qui petronillam filliam Hugonis de Grantmeiſnell accepit in vxorem, cum qua totum honorem de Hinkley vna cum ſenechaltu Angliæ ex dono ejuſdem Hugonis adeptus eſt.* The ſame words hath Knighton the auncient chronicler of Leyceſter abbey. By which marriage the ſayd Robert became ſteward of England in H. 2. tyme, as appeareth in the Black and Red bookes of the exchequer in theſe words, which giue him an honourable commendation. *Vidi ego qui loquor, necnon molernis temporibus Leyceſtriæ comitem Robertum virum diſcretum literis eruditum, & in negotijs forinſecis exercitatum. Hic ingentem habens animi virtutem, paternæ quoque prudentiæ ſedulus amulator effectus eſt, cujus induſtriæ pluribus plena penes principem noſtrum Henricum ſecundum, quem nec palliata prudentia nec diſſimulata fallit ineptia, atque adeo valuit penes eum, vt ex mandato ipſius non ſolum ad ſcaccarium, verum per vniuerſum regnum preſidentis dignitatem obti-*

nuit,

nuit. But now to come to the purpoſe: By this office he was cheiefe juſtice of England, preſident and cheife officer in the king's exchequer, the mother court of the realme; his place being moſt pre-eminent aboue all other, as appeareth in the ſayd Red and Blacke bookes made in the ſaid H. 2. tyme by theſe words. *Illic enim reſidet capitalis domini regis juſticiarius, primus poſt regem in regno ratione fori*, &c. Alſo *ex officio principaliter reſidet, immo & preſidet, primus in regno capitalis, ſcilicet juſticia.* And in the chapter following, the queſtion being made, *quid eſt hujus tam excellentis ſeſſoris officium?* It is anſwered. *Aliud verius attribui ſibi non valet, niſi quod in omnibus, quæ in inferiore, vel ſuperiore ſcaccario fieri his proſpicit, & ad nutum ipſius qualibet officia ſubjecta diſponuntur*, &c. He might command Money to be payd for the king's ſeruice at his pleaſure, and he might alſo make his wryt, &c. And further it is ſayd of him. *Magnus eſt hic, cujus fidei totius regni cura, immo & cor regis committitur*; and therefore it is there declared of him and other great officers. *Quod a rege non poſſunt facile velli, propter majora, & magis vrgentia.* In this tyme of Henry the ſecond, was Richard de Lucy chiefe juſtice, who, in the abſence of the king in Normandy, bare the whole charge of gouernment of the realme, together with the queene, and keeping the ſeale, as appeareth by Richard of Aneſtys roll of expences in his ſuite of law, being in the king's receipt. And ſure his authority was great; for there it is reported, that the ſayd Aneſty's aduocates, who pleaded a diuorce att Rome, brought from thence; *redeuntes attulerunt judicium de adulterio, vnam cartam archiepiſcopo, alteram Ricardo de Lucy, tertiam michi*; and becauſe the ſayd Aneſty brought not one to the king, the king was offended thereat, ſoe as the ſaid Aneſty was forced to ſend to Rome for one for the king. And Glanuile likewiſe in that king's tyme was cheiſe juſtice: Behold, what was the place he held in the court of juſtice, by a fyne then leauyed, which I copyed out of the lydger booke of Oſney. *Hæc eſt finalis concordia facta in curia domini regis, apud Weſtmonaſter. ſcilicet die Mercurij proxim. poſt*

feſtum Sancti Georgij anno xxvi°. *regni regis H.* 2. *coram Galfro. Heliens. & Johanne Norwicenſe epiſcopo, & Ranulpho de Glanuile, & Richardo Theſaurario, & Rogero Remfar, & Willielmo Rufe, & Roberto Mantell, & Willielmo Baſſett, & Radulpho de Wigorn, & alijs. juſtiſ. & baronib. domini regis, qui ibi tunc aderant*, &c. which confirm the words of the Red and Black books.

This word *capitalis juſtitia*, by one which wrote in H. 7. tyme, a deſcription of the Exchequer [which booke is in the king's library at Richmount] is declared, what his place and exerciſe was by theſe words: The king att this day hath aſſigned great lords, as the ſteward of his houſe. which then was called *capitalis juſtitia* or *preſydent*; the chancellour of England, which then was called *cancellarius*; the conſtable; two chamberlaynes; and the marſhall; which as yet be great lords; and the reſidew of the authority of the ſayd great barons remayneth in them, which be now barons of the exchequer.

But ſurely the authority of the cheife juſtice or ſteward of England was great, as it appeareth by our hiſtoryes, wherein I beſeech you, beare with mee, in that I betake mee more to my memory of that which I have read, then to recite the words out of the hiſtory which I haue not ready in hand in this poynt. The next I fynd in this ranke of cheife juſtice is Hubertus de Burgo earle of Kent, and cheife juſtice of England, who comming to appeaſe a mutiny or vproare in London, calling the mayor, aldermen, and other auncients of the city together, declared to them the perill they had incurred of the king's diſpleaſure, and forfeyture of their libertyes, in permitting ſuch outragious and furious tumults to goe vnpuniſhed; to whom one of the citizens of good worth and rank, thinking himſelfe wiſer then the reſt, anſweared, that the citizens [the offenders as the earle called them] had done well in reſiſting ſome ſuch matter as diſpleaſed them, in rayſing power; whereupon the earle without further delay, or attending for a commiſſion, commanded preſently the ſame champion of the malefactours to be hanged in Cheapeſide, as I remember, without further tryall: which

which preſently qualifyed the vproar, and ſynce that tyme the memory thereof hath cooled the humour of buſy heads.

We may ſee the authority of the lord ſteward is pre-eminent in this, that the king doeth appoint noblemen for their liues to be tryed by their peeres before him, and to be judged by him, who preſently being ſet in his place vnder the clothe of eſtate changeth his name, being termed *it may pleaſe your grace*, yea, and with ſolemne reuerence, as though he were the prince, ſoe long as he carryeth the the white rodd which is deliuered to him as his enſigne of authority.

How there is a high ſteward made in parliaments, and ſometymes in the houſehold, as I myſelfe haue ſeene the late lord William earle of Penbroke in our late queene Elizabeth's tyme, vnder whoſe command the inferiour officers of the court were, I omitt.

Soe will I alſo of the authority of ſtewards of courts, of ſeignioryes, and mannours, whoſe court-rolls haue ſuch power, as I haue heard, yea and knowne, that a ſteward in his court may fayre diſherite the lord of his land by an entry of ſurſum reddidit, &c.

N° X.

Certaine remembrances touching the ſame.

By ANONYMOUS.

THE ſeneſchallſy, or high ſtewardſhipp of England is knowne to be the greateſt office of the land, by reaſon of the authority it hath ouer all other offices, which ſynce the Norman conqueſt hath long continued by deſcent inheritably in the family of the auncient earles of Leyceſter, which was after tranſlated to the houſe of Lancaſcaſter, and by king Henry the fourth of that ſtock, when he had obteyned the crowne, was incorporated into the ſame,

as

as all the honours, lands, and hereditaments of that houſe were. For the playner manifeſtation whereof it will ſerue well to the purpoſe, before the office itſelfe be deſcribed, to ſhew the firſt inſtitution thereof, and to recount in order the ſucceſſion of the officers, whilſt it paſſed inheritably.

It is therefore to be vnderſtood, that amongſt the perſons of chiefeſt account which entered this kingdome with duke William of Normandy, and were aſſiſtants vnto him in the conqueſt thereof, one Hugh of Grentmeiſnell, a baron of Normandy, was of ſpeciall reckoning, whoſe father Robert of Grentmeiſnell, one of the chiefeſt noblemen of all Normandy, reteyned at home with him for his owne comfort, and for the preſeruation of his ſtock, the elder of them named Robert, who ſucceeded him in all the inheritance of Normandy; but ſent with the duke his ſecond ſonn called Sir Hugh of Grentmeiſnel, who ſoe demeaned himſelf in the enterpriſe, that when by conqueſt and ſtrong hand the whole kingdome was ſubdued by the Normans, their duke reguarding the good ſeruice of thoſe that aduentured, and laboured with him, forgott not the prayſe-worthy deſerts of this nobleman, whom therefore he rewarded liberally with ſundry great territoryes and portions of land in many ſhires of the realme, as namely with the great lordſhips of Petworth, Mereſton, Queninton, Weſtone, and Wilcote in Glouceſterſhire, with diuers lands in Ferendone, Merſitone, Thorp, Welintoun, Stauerton, Mereford, Neubotle, Midleton, Sutone, Bieuld, Wodefort, Egedone, and Ceruelton in Northamptonſhire, with Wichingſtone and Hinckley in Leyceſterſhire, with diuerſe lands in Edwolton and Sandiacre in Nottinghamſhire, and with Ley in Suffolk, as appeareth by the record in the exchequer commonly called Doomeſday. Moreouer he made him high ſeneſchall or ſteward of the whole kingdome according to the Norman uſe: [a dignity neuer heard of in this land before] and did further aduance him in marriage with a great lady inheritrix of ſundry poſſeſſions, named Adaliſa or Alice, on whom he begate two two daughters his heyres, the elder of them, called Petro-

nilla or Pernell, was marryed to Robert earle of Leyceſter, ſurnamed auec les Blanch-maines, that is, Robert with the white hands, that was the ſonn of Robert Le Boſſu earle of Leyceſter, who was ſonn vnto Robert of Beaumont lord of Pontadomare, and earle of Mellent in Normandy, brother to Sir Henry of Neubourg the firſt earle of Warwick after the conqueſt; vnto whom the ſayd Pernell brought the one moyety of her father's eſtate and poſſeſſions, and withall for increaſe, becauſe ſhe was the elder daughter, together with the honour and lordſhip of Hinckley, the office of Senechalſey or high ſtewardſhip of England, which was not partible as the other inheritances were. The younger of the ſayd Sir Hugh Grentmeiſnell's daughters, called after her mother Adaliſa, was giuen in marriage to one Roger Bigott a Norman, with the other moiety of her father's poſſeſſions, vnto whom ſhe bare diuerſe ſonns and daughters, from the eldeſt whereof, named Hugh Bigott, that was the firſt earle of the Eaſt Angles of this family, conteyning Norfolk and Suffolk, the other Bigotts that were after earles of Norfolk are lineally deſcended; between which two familyes contention hath often bin about the office of ſtewardſhip, whereof in this place to note what is ſet downe in the record of the Exchequer called the Red booke, is not impertinent to this purpoſe, where it is ſayd, that on the Sunday before Candlemas day in the 20th yeare of the reigne of king Henry the ſon of king John, commonly called king Henry the third, at the coronation of his wife queene Eleanor, that was the earle of Prouince's daughter, Simon Mountford then earle of Leyceſter and high ſteward of England lineally deſcended of the before named Pernell, being ready on the day of the coronation to execute his office of high ſteward, which by right apperteyned vnto him, was forbidden and gainſayd by Roger Bigott then earle of Norfolke, being deſcended from the aforenamed Adaliſa the younger of Sir Hugh Grentmeiſnell's daughters, allaedging that it was his right to execute that office. Which controverſy [as alſo diuers others there moued] was heard judicially before the king, vnto whom earle Simon replying, anſwered, that it was true that contention

tention had bin heretofore moued between their aunceſtors for the ſame matter in the dayes of king John, the king's father, which was compounded and pacifyed for the price of tenne knights, or rather tenne knights fees giuen by the earle of Leyceſter vnto the earle of Norfolk, who therefore releaſed all his title and right in the high ſtewardſhip, whereunto becauſe earle Roger of Norfolke allaedged, that there reſted of thoſe knight's fees two and an halfe to be aſſigned vnto him, earle Simon made anſwer, that he might well recouer them with the arrerages by the laws of the land in the king's court, and ought not therefore to hinder him in the execution of his office, ſeeing he acknowledged the former accord, and by virtue of the ſame was already in quiett poſſeſſion of ſeauen knight's fees and an halfe; and ſo was earle Simon by the kings owne doome and ſentence admitted to the quiett exerciſe of the ſeneſchalſye at the ſame coronation.

And now to returne where we left. Robert earle of Leyceſter wedded dame Pernell, and in her right was high ſeneſchall or high ſteward of England [and was the man for whoſe greatneſs of ſtomach the walls of the towne of Leyceſter were razed to the ground, becauſe he tooke part with the young king Henry againſt his father king Henry the ſecond, as hiſtoryes make mention] and begate on her ſonns and daughters; and after in king Richard's days the firſt warring in the holy land, was ſlaine in the ſiege of Acon in the yeare of our Lord 1190, whoſe eldeſt ſon Robert, ſurnamed after his mother Fitz Pernell, was after his death earle of Leyceſter and high ſteward of England, of whom many worthy acts are by hiſtoryes remembered, boeth of his proweſs in the field, and fidelity to king Richard the firſt, with whom he continued as a moſt faithful companion during the Paleſtine wars, was pertaker of his euill fortune, by being there taken priſoner, and compelled to pay for his redemption 2000 markes of ſiluer, and therefore compelled to ſell his caſtle of Paſey in Normandy. But to be briefe, and not to ſtay vpon the narration of theſe things, itt ſerueth onely to the purpoſe to note, that he was one of our high

ſeneſchalls,

ſeneſchalls, and dying without yſſue of his body in the yeare of our Lord God 1204, was buryed in the abbey of Preux neare Leyceſter, leauing his two ſiſters to be his heyres, between whom the whole inheritance was diuided in the days of king John. Amicia the eldeſt ſiſter was marryed to Simon de Montefort younger brother to Almerick, earle of Eureux in Normandy, and Margaret the youngeſt was marryed vnto Saher of Quency, whom king John made earle of Wincheſter, vnto whom ſhe brought the one half of the earledome of Leyceſter, and of the honour of Hinckley, and among other lands the mannour of Grobey, Quitwick, Sheepeſheued, Hales, Brackley, Southkeſtan, Finkſbury, and Chinommer.

Simon of Montfort, according to the law and cuſtome of the land, was in the right of his wife, being eldeſt ſiſter, made earle of Leyceſter, and high ſeneſchall of England in the dayes of king John, but he enjoyed not long thoſe honours, being for his contumacy and diſobedience, boeth he and his children, ſhortly after baniſhed the land, and his honours and poſſeſſions beſtowed on earle Randolfe of Cheſter, who held them a great tyme, except only the patronage of the abbey of Preux near Leyceſter, and the office of the ſtewardſhip of England, which the king kept in his owne hands. This earle Simon a great warriour, was head and leader of the young French king Ludouicus forces againſt the Albigenſes about the citty of Tholouſe, where he was after ſlaine. Theſe Albigenſes, becauſe they began to ſmell the pope's treachery, tryed to controule the immediate proceedings, and diſcipline of the ſee of Rome; the pope therefore recounting them as people hereticall, excited the French king to lay ſiege againſt the ſayd citty of Tholoſe, to impugne theſe Albigenſes his enemyes. But ſuch was the mighty protection of God, fighting for his people againſt the might of man, that the French could doe noe good with all their engines and artillery againſt the citty, but were forced to retire with great loſſe of people, amongſt whom, this earle Simon of Mountfort, generall of the army, to whom the pope a little before had giuen the

earle of Tholouſes land, was ſlaine with a ſtone before the gate of the citty, in the year of our Lord God 1219, as likewiſe was a brother of his in beſieging of a caſtle neare into Tholoſe att the ſame tyme. He left two ſonns of great fame, earle Almarick of Mountfort, conſtable of France, that was taken priſoner in the holy land, and after his Redemption in returning homeward, dyed at Hydruntum in Italy anno 1242: and Simon the younger, that after obteyning the good grace and fauour of king Henry third, whoſe ſiſter he marryed, was reſtored to the earledome of Leyceſter, and to the integrity of his fathers loſt honour, and patrimonyes in England. A man he was of great courage and renowne, well experienced in the warrs, and in the matter of gouernment: for long tyme had he bin ſeneſchall, and gouernour of the country of Gaſcoigne for the king of England his brother in law, which of his owne accord he reſigned contrary to the king's minde, that laboured greatly to retayne him in good affection towards him, boeth becauſe he was a man of great power, wiſe, and valiant, and for that the French laboured to make him their ſeneſchall. But ſuch was this earle's happ, that in the new begun variance between king Henry and his nobles, for not obſeruing the laws of the land, eſpecially ſuch new decrees as had binn made at Oxford, for expelling of ſtrangers out of the realme, he was choſen cheife captaine and leader of the nobility. He for the tyme ſoe much preuayled in the enterprize, that the king was by them taken in the battle neare Lewes in Suſſex, togeather with his eldeſt ſonn, and the king of the Romaines, his brother. Howbeit Edward the king's eldeſt ſonn eſcaping out of their hands renewed the warr, and att Eueſham in battle, ſlew this earle Simon, and deliuered his father from the hand of his enemyes in the yeare of our Lord God 1265, which was in the 48th yeare of the raigne of king Henry the third. Thoſe that tooke part with earle Simon, were diſinherited, and their lands giuen to ſuch as ſtood with the king. Diuerſe fledd the realme, and amongſt them Simon and Guy, and the other ſonns of this earle, which eſcaped

eſcaped into France, and left noe poſterity in this land. The king afterwards gaue the earledome of Leyceſter to his younger ſonn Edmond, that was the firſt earle of Lancaſter, and to his heyres, which euer afterwards continued in the houſe of Lancaſter, who bare the title of Leyceſter earldome, and withall held, and enjoyed the office of the high ſtewardſhip of England, vntill the ſame, with all other the honours, lands, and hereditaments thereunto belonging, were vnited to the crowne in the days of king Henry the fourth being of that ſtock Now of late it hath pleaſed the moſt noble and virtuous princeſſe, queene Elizabeth our gracious ſoueraigne, to reuiue the honour and title of Leiceſter earledome in the perſon of the right noble lord Robert of Dudley, younger brother and heyre apparent to the right noble lord Ambroſe, earle of Warwick, and Viſcount Liſle, boeth ſonns to the high and mighty prince John, late duke of Northumberland, lineally deſcended, and heire in blood of the bodyes of Robert of Beaumout, earle of Mellent in Normandy, aunceſtour to the before earles of Leyceſter, and of Henry of Newburgh, earle of Warwick aunceſtour to the earles, ſynce boeth brethren, as before hath bin declared, and liuing in the tyme of the Norman conqueſt, as more plainely is ſhewed by pedigree deduced at the end of this treatiſe.

Thus much being declared by way of a preface, or ingreſſion to the matter in hand, and to ſhew that the office of high ſtewardſhip of England hath heretofore paſſed inheritably in diuerſe familyes, as other great offices haue done, it remayneth now to be declared, what theſe ſtewardſhips are, with the authorityes and prerogatives to them belonging, and to produce ſuch notes and obſeruations, as are extant touching the ſame.

And to begin with the cheifeſt, the ſeneſchalſy, or ſtewardſhip of England; as it is not to be doubted of, but that it tooke beginning from the Normans, and was by them firſt eſtabliſhed in this land after the great conqueſt, and victory ouer the Engliſh Saxons in the yeare of our Lord God 1066, by their example of their home concernment,

and gouernment in Normandy, where the duke had under him for his cheifeſt officer, a ſeneſchall, or ſteward : ſoe cannot the right of this office be better, or in breifer ſort deſcribed, then by ſetting downe the ſtate of the dukes ſtewards faithfully, in ſuch ſort, as it is to be ſeen written in the old cuſtomary booke of the duchy of Normandy in theſe words.

In tymes paſt, there was wont to wander throughout Normandy, a certaine juſticiar, greater than thoſe before mentioned, who was called the prince's ſeneſchall, or ſteward. He was wont to perfect or amend that which the other juſtices had left undone : he kept the prince's lands, the laws, or rights of Normandy : he cauſed to be amended and obſerued, all that was not rightly done by the bayliffe, whom he remoued from the prince's ſeruice if he ſaw it expedient ſoe to doe : he was wont to viſitt the prince's forreſts and incloſures, to keepe courts of the forreſts, to inquire how they were uſed ; their cuſtomes he commanded to be obſerued, deliuering right to euery one as the ſame by antiquity grew due, or by charter had bin confirmed vnto them, ſoe diſcreetely concerning the prince's rights, that in the obſeruation of them he notwithſtanding hurt none of his ſubjects ; ſuch as vpon diligent inquiry he found faulty, and to forfeit within foreſts, either in trees, or in wild beaſts, or in free-fowl, he was wont to puniſh by the purſe, or for want of ability that way, by long impriſonment : he cheifely gaue his mynd to keepe the counfrey in peace, and ſoe wandring hither and thither throughout Normandy once euery three years, did viſitt all the parts of the balliages thereof. To him belongeth to make enquiry in euery balliage of the exceſs, or wrongs done by the vnder juſticiars, or likewiſe of common robberyes, of violent deflourers of virgins, of murders, of burning, and of all thoſe things which belong to the pleas of the ſword, whereof peace or reformation hath not bin had in court : of all other criminall facts, he likewiſe diligently ſearched, and vpon inquiry cauſed juſtice to be done throughout : he cauſed inquiry to be made of trees not digged vnder ground, and wrecks caſt upon the land,

land, and other the prince's rights; the remouing of waters, and the ſtopping and hindering the courſes thereof did he reduce to the old forme, that their paſſage might be hurtfull to noe body; if any man were minded to turne the courſe of any water running throughout his owne ground, the banks whereof on either ſide were ſituated within his owne fee, he might lawfully doe it, ſo as the ſame water, when it paſſed out of his ground, might be conveyed into its old channel without any man's hurt or hindrance. It is to be vnderſtood notwithſtanding, that none may lawfully ſtopp the courſe of an ordinary running ſtreame within his banks, or dykes then from the riſing to the goeing downe of the ſunne. Neither may any man ſtay the courſe of waters with any new ponds, dykes, or ſluices, but ſhall permitt them to turn their courſe, leaſt the mills ſtanding vpon their ſtreames, or men in their affayres, as tanners, dyers, or ſuch like ſhould hereby ſuffer loſſe and detriment. If any ſhall ſtay them for the filling vp of his pooles or ponds, they ſhall be bound to reſtore ſuch loſſes, as the millers, or others liuing by the paſſage of thoſe waters ſhall haue ſuſteyned by the withholding of them, and the waters ſhall be ſuffered to runn their accuſtomed courſe. Noe man may erect a fiſhing, or erect a mill, unleſs the water-banks on either ſide be within his owne fee, wherein he hath liberty. Weares, or other ſuch like things for fiſhing may not be made in running ſtreames, becauſe by them oftentymes the waters are corrupted. Yet notwithſtanding they may bring the waters by ditches, or trenches out of the running riuer vnto their grounds, ſoe as the ſame returne not back into the running ſtreame.

It belongeth alſo vnto the ſteward to cauſe the bounds and limitts of townes and villages, and the ſtreetes and paths to be reuoaked to their auncient eſtate, and to ſee that old and accuſtomed highways be opened. Noe man may in theſe caſes alleadge for excuſe, any let, or hinderance, wherefore he ought not to make amends to the prince. As for towne ditches, or common ſtreetes, which ſerue to noe priuate perſons poſſeſſion, but are common vnto all,

if

if there be any uſurped or encroached vpon, they ought to be reſtored to the common benefitt, and they that doe occupy them, ought not to eſcape puniſhment.

All theſe things apperteyne vnto the office and charge of the ſeneſchall, for the due execution whereof there needeth neither plea nor aſſize: but whereſoever hee found cauſe, he did therein and prouided as he ſaw needfull and expedient.

Thus farr forth is the high ſteward's office deſcribed in the old cuſtomary booke of the dutchy of Normandy, from whence came the firſt inſtitution of the ſame with vs in this kingdome, eſtabliſhed noe doubt with noe leſs authority, and priuiledge here vnder the kings of this land, then the ſame was then practiſed vnder the dukes of that dutchy, whereof there is an eſpeciall title written, though nothing clearly, amongſt other matter in an old booke of parchment, belonging, as it is ſayd, vnto the learned lawyer and ſkilfull antiquary Mr. William Fleetwood, eſqr; one of the ſargeants at the law, and recorder of the citty of London, which word for word followeth.

Here is to be ſhewed who is to be high ſteward of England, and what his office is.

The ſenaſchallſye, or high ſtewardſhip of England belongeth vnto the earldome of Leyceſter, and of old tyme did thereunto apperteyne, and it is to be vnderſtood, that it is his office vnder and immediately after the king, to ouerſee and gouern the whole kingdome of England, and all the officers of juſtice within the ſayd kingdome in tymes boeth of peace and warr, in manner following.

The manner how, and when the lord high ſteward ought to exerciſe his office by duty, and the oath of fealty is ſuch: when euer man or woman ſhall come vnto the king's court, in whatſoever court it be, and poſſibly vnto the king himſelfe, to ſeeke for redreſs againſt injury done vnto them, and he or ſhe not being able in due ſeaſon to obteyne remedy, then the high ſteward of England ought, and is bound to receaue their petitions and complaynts,

and

and to keepe them untill the next parliament thereafter to be holden, and to aſſign vnto ſuch complaynants, if he thinke fitt, a day wherein they may exhibite and proſecute their petitions, and in full parliament, in the preſence of the king, to reprehend or blame that officer, or thoſe officers who euer they bee, that ſoe haue fayled in doeing of juſtice, and thoſe thereof to call to account, vnto whom in ſuch caſes euery one throughout the kingdome is bound to anſwer, the king onely except. If the chancellour of England haue fayled of making originall remedy and amends, and the juſtices, treaſurers, barons, and chamberlaines of the exchequer, ſteward of the king's houſe, eſcheatours, coroners, ſheriffes, clearkes, bayliffes, and other officers, of what place or records ſoeuer they be, in their proceſſes, judgements, executions of judgements, and juſtice to be made to the favour of one, and loſs of the other party, for gifts, bribes, or other procurements, ſhall fyle, or giue ouer at the leaſt ways; if any juſticiar, when as both partyes pleading before them ſhall ſtand in judgement, ſhall by ſuch falſe procurements deferr judgement contrary to juſtice, and the laws and cuſtomes of the land; if then the chancellour of England, orany other of the king's officers, in ſuch caſe, ſhall alleadge in parliament, and ſay for their excuſe, that in that caſe ſuch hardneſs and doubtfullneſs of the law, and right, did ariſe when the ſame was heard and proponed before them, that neither he nor the court of chancery, or any other courts wherein he is an officer, were able or knew how to attaine vnto the ſafe determination of the right, then ſhall he declare and open the ſame ambiguity and doubt in parliament. If then it be found, that the law was doubtfull in that caſe, the chancellour, or other officers ſhall be held accuſed, and then ſhall the high ſteward of England, togeather with the conſtable of England, in the preſenceof the king, and other of the parliament, make choyce of fiue and twenty perſons more, more or leſſe, according as the caſe ſhall require, togeather with ſuch other caſes in the parliament rehearſed, amongſt whom ſhall bee earles, barons, knights of the ſhire, citizens, and burgeſſes, who there

there ſhall ordaine, agree vpon, and eſtabliſh remedye by law in all ſuch caſes for euer after to endure. And thoſe laws ſhall be recited, written, and allowed in full parliament, and ſealed with the great ſeal, and deliuered forth to all places of law and juſtice from thence forward, to be holden for laws, and in publick places, where it ſhall be thought expedient, they ſhall be proclaymed and divulged: whereas all other common laws, and chiefely ſtatute-lawes throughout the whole kingdome, ought to be publickly proclaymed.

If it ſoe happen that there was in ſuch like caſe, either common-law or ſtatute-law, ſoe that the king's ſteward and others of the parliament may vnderſtand and perceaue, that ſuch default and delays in proceſſes and judgements doe happen by ſuch officers, when as the deceit and malice of ſuch officers hath openly and often before been apparent, then then ſhall he be remoued out of his office, and ſome other fitt officer ſhall be put in his place. If they ſhall preſume againſt the juſtices and officers, or by excuſing themſelves, ſhall ſay, that they haue not heretofore knowne themſelues, and the courts whereby they are in ſuch caſes to be deliberate, and take aduiſement; then ſhall they be admoniſhed by the ſteward on the behalfe of the king and parliament, to ſtudy and ſearch better the common laws, that noe ſuch ignorance nor negligence be found in them in the like caſes afterwards. If they ſhall happen to offend in the like againe, they then ſhall be put out of their offices, and other diſcreeter and more diligent perſons ſhall by the king and his councell be aſſigned in their roomes.

Likewiſe it is the ſteward's office [if the king haue euill councellours about him, that aduiſe him to doe things tending openly and publickly to his diſhonour, or to the diſinheriting, and publick hurt of his people] for the ſteward of England, taking with him the conſtable, and other great eſtates, and others of the communalty, to ſend to ſuch a councellour, forbidding him in ſuch ſort to leade and councell the king, and of ſuch his euill councell he ſhall make rehearſall, injoyning him to depart from the king's preſence, and longer not to abide with him to his

diſhonour, and the publick hurt as is aforeſayd, which if he ſhall not doe, they ſhall ſend vnto the king to remoue him from him, and to giue noe more eare vnto his councell, for that amongſt the people he is eſteemed to be an euill councellour between the king and his ſubjects. If hereupon the king doe not put him away, againe, and often ſhall they ſend, as well vnto the king as vnto him: if at the laſt neither the king nor ſuch councellours of his haue regard vnto the meſſages and requeſts made vnto them, but ſhall refuſe to doe thereafter, then for the weale publick it is lawfull for the ſteward, conſtable of England, noblemen, and others of the communaltye of the realme, with banner in the king's name diſplayed, to apprehend ſuch councellour as a common enemy to the king and the realme, to committ his body to ward vntill the next parliament, and in the meane tyme to ſeyze on all his goods, lands, and poſſeſſions, till judgement be pronounced of him by aduice of the whole kingdome in parliament, as it happened vnto Godwyn, the earle of Kent in the days of king Edward the confeſſour, next predeceſſour to William duke of Normandy, conquerour of England, who for ſuch euill acts, and councells of his, was depriued of his earledome, which eſcheated to the aforeſayd king. Notwithſtanding at the king's ſuite, and by the noblemen's permiſſion, Godwyn came againe to England, and did after forfeit as before. And as it happened likewiſe vnto Hubert de Burgh, earle of Kent in the tyme of king Henry the third, that was ſonn of king John, who for his euill deeds and bad councell was apprehended, and by the high ſeneſchall, and other peeres depriued of his earledome by the allowance and conſent of the whole parliament. So likewiſe did it befall vnto Pierce of Gaueſton, who in the days of king Edward the ſonn of king Henry, for ſuch his euill acts and councells was baniſhed out of all the king of England's dominions, as well on this ſide as beyond the ſeas, which Pierce afterwards by the king's meanes, and the permiſſion of the nobility returned into England, and had of the king's giuft the earldome of Cornwall; but was

after that for his euill deeds and councell baniſhed the realme againe by the nobles and commons, and had his ſayd earledome eſcheated vnto the king: but he returned afterwards without the noblemens leaue and conſent, and did reſort and aſſociate himſelfe to the king, as before tyme he had done, which when the high ſteward, conſtable, and others of the nobility vnderſtood, hee was by them apprehended and beheaded att Blacklow in Warwickſhire, as a publick enemy to the king and the realme. Soe haue you as much as in the ſayd old booke is to be ſeene touching the office of the high ſteward.

After the death of any king or queen abſolute of this land, the high ſteward of England by virtue of his office ſitteth judicially, and keepeth his court in the white-hall of the king's pallace att Weſtminſter, neare vnto the king's chappell, and there receaueth the bills and petitions of all ſuch of the nobility and others, as by reaſon of their tenure, or otherwiſe, clayme to doe ſeruices att the new king's coronation, and to receaue the fees and allowances therefore due and accuſtomed. Thus did John duke of Lancaſter, earle of Leyceſter, high ſeneſchall of England at the coronation of king Richard the ſecond, and Thomas Percy earle of Worceſter, who exerciſed the ſame office at the coronation of king Henry the fourth, as ſubſtitute and deputy to Thomas the ſonne of the ſayd king Henry, then being very younge, vnto whom his father had aſſigned that office, being parcell of his owne inheritance, who before he had atteyned the crowne, was not onely duke of Lancaſter, as his father John of Gaunt had bin, but alſo as earle of Darby, Lyncolne, Leyceſter, Hereford, and Northampton, and by the earledome of Leyceſter, inheritably alſo lord high ſteward of England.

Synce the tyme the ſayd office hath bin extinct in the crowne, by the deſcent of the ſame vnto king Henry the fourth, as heyre vnto dame Blaunche his mother, daughter, and heyre vnto Henry duke of Lancaſter, earle of Leyceſter, and high ſteward of England, experience ſhews, that vpon the arraignment and tryall of any peere

of

of the realme, that is to ſay, duke, marqueſs, earle, viſcount, or baron, or of any of their wiues or widdows, vpon indictment of treaſon or felony; the king vſeth to grant the office of the ſtewardſhip of England *pro illa vice tantum* to ſome peere of the realme by letters patents; the tenour whereof hereafter enſueth, who, inſtead of the lord high ſteward that by auncient law hath bin holden for a competent and indifferent judge between the king and ſuch peere, ought and hath always uſed to bee judge, and giue ſentence of acquittance or condemnation vpon the peere arraigned.

The tenour of the Patent.

Regina, &c. præclariſſimo conſanguineo & conſiliario noſtro A. B. &c. ſalutem, ſciatis, quod cum C. D. Marchio, &c. indictat. exiſt. &c. Ac pro eo, quod officium ſeneſchalli Angliæ, cujus preſentia pro adminiſtratione juſtitiæ, & executionis ejuſdem in hac parte fiend. requiritur, vt accepimus, jam vacat, de ſtrenuitate, fidelitate, prouida circumſpeccione, & induſtria veſtris plurimum confidentes, ordinauimus, & conſtituimus vos ex hac cauſa ſeneſchallum Angliæ, ad officium illud cum omnibus eidem officio in hac parte debita pertinent. hac vice gerend. occupand. exercend. dantes & concedentes vobis tenore præſentium plenam poteſtatem indictament. prædictum cum omnibus idem tangent. a prefact. juſticiar. noſtris recipiendi, & inſpiciendi, Ac ad certos diem & locum, quos ad hoc prouideritis, ipſum marchionem, &c. coram vobis euocand. & ipſum ſuper inde audiend. examinand. & reſpondere compellend. ac fine debito terminand. Nec non tot & tales dominos, proceres, & magnates hujus regni noſtri Angliæ, ejuſdem marchionis, &c. & aliorum pares, per quos rei veritas hac in parte melius ſciri poterit, ad diem & locum predict. ex cauſa predicta coram vobis comparere adſtringend. &c.

Thereupon the lord high ſteward directeth forth a precept to the juſtices, before whom the indictment is taken, willing them to certify the ſayd indictment at a day and place by him aſſigned, and doeth likewiſe direct another

precept to one of the ſerjeants att armes for the ſummonition of the peeres againſt the day of tryall, in theſe words.

A. B. Comes, &c. I. N. ſeruienti dominæ reginæ ad arma ſalutem. Tibi præcipio, quod tot ac tales dominos proceres & magnates hujus regni Angliæ predictæ C. D. marchionis E. & aliorum pares, per quos rei veritas hac in parte melius ſciri poterit, quod ipſi perſonaliter compareant coram me apud Weſtmonaſter. xxviij. diei Junii, &c. ad faciend. ea quæ ex parte dominæ reginæ tunc ibidem in præmiſſis enumerant, &c.

The like precept doeth he alſo ſend to the lieutenant of the Tower of London, for the bringing forth of the peere being priſoner, to his tryall and judgement.

It appeareth, that at the common law, before the xxth yeare of king Henry the third, a ſubject hauing title to lands which are in the king's poſſeſſion, might haue a writt to the ſheriffe of the countrey, where the lands doe lye, againſt the king, after this manner.

Precipe. H. regi Angliæ, quod reddat. ſ. 9. centum, acras terræ in d. &c. But whither the writt ſhould be awarded vnder the teſte of the high ſteward and conſtable of England, that is to be doubted.

Touching the office of the lord ſteward of the queenes houſehold.

Of the lord ſtewards office of the queenes houſe, being throughly well known to the chief officers of the houſehold, it ſeemeth needleſs to ſett downe any notes or obſeruations at all, by reaſon of the daily and continuall execution thereof ſtill in practice. Howbeit, becauſe there is left vnto vs from elder ages, a forme thereof ſtill in writing, greatly to be regarded euen in theſe our days, this place ſerueth fittly for the exemplification of the ſame in ſuch ſort, as it is ſett downe in an old booke of record, called *Domus regis Angliæ*, preſerued in the counting-houſe of the houſehold, wherein the whole ſtate of the king's houſe is orderly deſcribed; and this office, amongſt the reſt, after this manner enſueing.

The

The ſteward of the king's houſehold.

The ſteward of the king's houſehold receaueth his charge of the king's high and proper perſon, and the houſehold ſtaffe in theſe words following, *ſeneſchall tennez le baſton de noſtre maiſon*; by which there is forthwith a ſtatute made, and therein it is ordeyned, that the lord ſteward of the houſe ſhall warrant afterward the marſhallſea, that is, the court of the houſehold, of which he is a judge of life and limbe: and except in thoſe caſes, the treaſurer, comptroller, cofferer, two clarks of the green-cloth, and the cheife clarke of comptrollment, for any matters elſe done within the houſehold, or apperteyning thereunto, ſitt with him att the boorde of doome, that is att the greene-cloth in the compting houſe, as recorders and witneſſes to the trueth.

The ſtate of all this excellent houſehold is wholly committed to be ruled and guided by his diſcretion, and all his commandements in court are to be obeyed and obſerued.

Alſo within the houſehold, except in the king's chamber, he is always to be ſerued couered, out of the king's preſence, whatever great eſtate elſe be preſent, as with a cup, a cupboard, and diſhes, but non aſſay.

Alſo while he is preſent in court, there ought no new commandement nor charges of officers, or any other perſons to be made without commandement, firſt of his perſon for the officers moſt ſure diſcharge.

Alſo in the houſehold's rules and judgments he repreſenteth the king's eſtate: his ſtaff is taken as for a commiſſion.

Alſo he may in houſehold, of his power, annul any cuſtome [not meddle with worſhip, or profitt] or change and erect anew ſuch as ſeeme vnder his wiſedome, by aduiſe taken att the compting-boord, for the better, and to the king and his houſehold of more honour and profitt.

And in that he is head-officer, he giueth example to all other to be of gouernance, with an ordinate rule to be contented with moderate coſtages within the court in liueryes and

and ſeruices, taking dinners and ſuppers in the hall, or in his chamber, as often as it pleaſeth him to ſearch and ſee the good rules and the directions in them.

Hee hath daily in the hall eating, one chaplain, two eſquires, and foure yeomen, and in chamber daily for his breakefaſt, and his chamberlaine's meate, and ſupper, and liuery for all night, eight loaues, foure meſs of great meate, two rewards of roaſt, two pitchers of wine, ſix gallons of ale; and from Allhallowntide vntill Eaſter one torch, to attend upon himſelfe, one tortois to fetch his liuerye by, three perchers of wax, ſix candles of waxe, eight candles of tallow, foure faggotts, litter, and ruſhes all the year of the ſergeant vſher of the hall and chamber: and after winter ſeaſon foure ſhides, two faggots, and when him liketh, to haue more largely in any thing, then his chamberlaine that doeth fetch it, or receaue it, muſt record thereof by taillee, or bill in the counting-houſe.

Alſo the ſteward taketh of the compting-houſe for his fee at Eaſter and Michaelmas, twenty markes, and for his roabes for winter and ſummer at the feaſts of Chriſtmas and Whitſontide, ſixteen markes; and for his napery at the foure feaſts of the year by euen portions, three pieces of linnen cloath in the great ſpicery, or in money therefore in the compting-houſe, in all thirteen pounds, one ſhilling, and four-pence.

And he hath one yeoman of his chamber ſtill abiding, whilſt himſelfe is out of court, to keepe his ſtuffe, taking for his liuery, daily one caſte of bread, two meſſe of great meate for noone, and at night one gallon of ale.

The ſteward and treaſurer of this honourable houſehold repreſent within it the eſtate of an earle. Item, the ſteward and treaſurer, or one of them, is bound to be in the compting-houſe at the awaight of the daily accompts of the houſehold: and by the writing of noble king Edward the third's ſtatutes, in caſe it paſs for lack of them three days vnaccompted, then they two ſhall acquite the coſtages of the king's houſehold for one day, of their owne proper coſts. The ſteward and treaſurer make warrants yearely

att Michaelmas to the cheife butler of England, aſſigning him how much wine, and in what place he ſhall lodge the ſame for the yeare following, for the daily expence of the houſehold, which hath and muſt with good ouerſight be ſure of three hundred tunnes. For other things looke into the ſtatute of noble king Edward, &c.

Thus much out of the booke called Domus regis Angliæ.

Sir William Stamford the judge in his booke of the pleas of the crowne vnder this ſtyle; *qui jugerá treaſon*, &c. who ſhall judge of treaſon and felony by virtue of their offices with noe commiſſion, and who doth not mention the ſtatute made anno 33 Henry 8. cap. 12. whereby it is ordeyned, that the great maſter or lord ſteward of the king's houſe onely, and in his abſence the treaſurer and comptroller of houſehold, with the ſteward of the marſhalſye, or two of them, whereof the ſteward of the marſhallſey to be one, may without commiſſion heare, and determine of treaſons, miſpriſion of treaſons, of murthers, manſlaughters, and bloudſhed perpetrated within the king's houſe; ſayth; for theſe, are great and choyce perſonages, in whom the king repoſeth ſuch truſt, that he hath ordeyned them eſpecially for the ſafety, and good gouernment of his realme and houſehold.

More hereof is to be read in the volumes of the ſtatutes 25 Edward 3. cap. 21. 3 Henry 7. cap. 14. 33 Henry 8. cap. 12. wherein the præeminencyes of the lord ſteward of the king's houſehold are rehearſed, needleſſe therefore in this place be recited.

Seneſchalli Angliæ.

Willielmus filius Oſberni, comes Herefordiæ.
Henricus Bellus-Clericus, filius regis Willielmi conqueſtoris.
Hugo Grantemeiſnell, dominus & baro honoris de Hinckley.
Willielmus Blanchmaynes, comes Leyceſter.
Robertus Fitz-Pernell, comes Leyceſter.
Simon de Monte-forti, comes Montis-fortis & Leyceſter.

Ranulphus comes Ceſtriæ.

Almaricus de Monte-forti comes Montis fortis & Leyceſtr.

Simon de Monte-forti junior comes Leyceſtr.

Edmundus, H. 3. filius junior, comes Leyceſtr. & Lancaſtr.

Thomas comes Lancaſtr. & Leyceſtr. filius prædicti comitis Edmundi.

Henricus comitis Edmundi filius, ac frater et hæres, Thomæ comitis, comes Lancaſtr. & Leyceſtr.

Henricus, comitis Henrici filius, dux Lancaſtr. comes Lancaſtr. Leyceſtr. Linc. & Derby.

Johannes Gandavus a loco natiuitatis cognomentum adeptus, regis Edwardi 3tij filius, ducta in vxoremBlanc. filia Henrici ducis ſecundo-genita, & altera Matilda ſoror ante-genita ſine prole defuncta, jure vxoris, factus eſt dux Lancaſtr. comes Leyceſtr. & ſeneſcallus Angliæ.

Edmundus de Langley filius regis Edwardi 3tij. dux Ebor. & comes Cantebrig.

Thomas de Lancaſtria Henrici quarti regis filius.

Richardus de Bello-campo comes Warwic.

Humfridus de Lancaſtr. Henrici ſexti patruus.

Humfridus Stafford dux Buckingham.

Richardus Neuill comes Warwic. & Say.

Henricus Stafford dux Buckingham.

Henricus Stafford dux Buckingham.

Jaſparus de Hatfield dux Bedford. & comes Pembroc.

Nº XI.

The Antiquity and Office of the Conſtable of England.

By Sir ROBERT COTTON, Bart.

IF wee curiouſly will looke into the roote of this queſtion, we muſt trauell out of our owne countrey, and there examine the office and name before it ſpread to ſoe reuerent authority. The etimologiſts all conſent that it grew from *comes ſtabuli*, as an office, that *præeſt omnibus copijs imperatoris*, or *imperatoris equitatui aulico*, in which ſenſe the conſtables haue held boeth functions. Theſe offices haue in their vnion and ſeparation varyed their name often. It was *tribunus celerum* vnder the kings, as Joachimus Perionius concludeth; then *præfectus prætorius* into which that former ſuffered vnder the emperours as Raynutus ſayth. It fell in office and name then withthe empire, reſpiring a little vnder the French kings, and vnder the name of *comes ſtabuli*; about the tyme that it grew moſt, Charles the Great contracted it to *comſtabilis*, as Aymonius and Procopius write it. Our tymes make it *coneſtabularius*. The antiquity I reade not before Chilpericus, who about the yeare 574 had *Cupianus comes ſtabuli*. From that age it fayled not in France, whence we receaued it with our conquerour, the Saxon age giuing vs noe ſuch dignity. The firſt I fynde here ſo called vpon good warrant is Robert de Oilly conſtable to Maud the empreſs, who as ſuch is wittneſs to her deed. Milo ſhe made conſtable of England, whom Stephen a while diſplaced, yet foure ſonns he had ſucceeding officers, and his daughter Margarett gaue it in inheritance to the Bohune family for many ages.

That the office, after the empire fell, did onely regard the king's ſtable, will appeare directly by Procopius; and that the *comes ſtabuli* neuer out of duty intermeddled with the king's army of old, but by commiſſion, is gathered out of Aymonius. *Chilpericus rex lendigaſium comitem ſtabuli præfecit expeditioni*, and after *Alagiſo camerario, Cerloni comiti ſtabuli, Worood comiti palatij præcepit, vt ſumptis Saxo-*

nibus ſlauorum comprimerent audaciam. Soe it was, not out of office, but joynt commiſſion, whereby alſo ſometymes they haue had the admirall's power. Soe Charles the Great ſent Richaredum *comitem ſtabuli cum claſſe in Corſicam,* ſayth Turpinus in his life. And that it was not of ſuch dignity as after it grew to, will appeare; for Hincmarus liuing 800 yeares agoe, giueth itt, amongſt the officers of the king's houſehold, but the next precedent place to the *venatores.* It thus ſtayd there vntil Hugh Capett neglecting the *præfectus palatij,* adjoyned that place to the *comes ſtabuli,* and entered his authority in the houſehold; but his rule in the field was not before Philip the Firſt, who made Fregerium his *comitem ſtabuli, præfectum rei militaris*; euer ſynce in this affayre he is *ſecundus a rege,* and hath the cuſtody *regalis gladij*; hence we may now gather it to be growne, to be as the *præfectus pratorius,* the ſword being the ceremonious inſtrument of boeth their creations. Of this Pliny in his panegyrick to Trajan ſpeaketh in the perſon of the emperour making a pretor, *Accipe hunc enſem, vt ſi recte imperauero, pro me, ſin ſecus in me vtaris.* This office hath not bin peculiar to France; for Michaell Palæologus was *magnus conoſtobilius* in the eaſterne empire, as Nicephorus writeth; and Aiſtaulphus the Lombard dying, Deſiderius ſucceeded, *qui comes ſtabuli fuerat,* ſayth Aymonius. From France, noe doubt, we receaued it growne to his beſt ſtrength; his authority being with vs in peace, to attend the next perſon to the king; in his court to hold plea of ſuch caſes wherein the ſubject had by the common law noe remedy: which by præſcription more largely they might haue done vntil the ſtatute 13 R. 2. As in actions grounded from contracts beyond ſea. 13 H. 4. fol. 5. In his court the marſhall is his officer, holding ſuch relation of miniſtry vnto him as the ſheriffe to the judge. In publick warr ſeruice his direction leadeth the king's army, and therefore in an old diſcourſe of the king's chiefe officers, his place is the firſt ranke, the marſhal next, and laſt the admirall. In priuate warr, as combat, his office is by Thomas of Woodſtock, once that officer in his diſcourſe to R. 2. and by

Hill a herald of armes to H. 4. thus deliuered. The conſtable muſt examine the cartell of defyance, that there may be juſt cauſe of fight. The place is at his appointment. His is the judgement, and his ſeat next the liſts. To renew or deferre the combate is his duty. The defendant hath noe counſell from his aſſignment. He meeteth the appellant, and giueth him entry into the liſts. The weapons he examineth, and cutteth them lawfull. Before him boeth partyes make thrice oath in French and Engliſh; after the firſt boeth combatants giue each the other his right hand, joyning their left hands on a miſſall, whereon the ſecond oath is taken. After the third oath the mareſchall commandeth all to depart the liſts except his two knights, and one of the marſhalls. He deliuereth a launce into the hands of either party, and after his thrice pronouncing *laſſies le aler* the partyes incounter. The king, if preſent, is judge, if abſent, the conſtable, come ſon vicar generall. His fees is armour and ornaments that fall from the combatants, and the ſpoyle of the vanquiſhed, the victour receauing from him a patent of victory. The conſtables office in triumphs, I leaue yee to learne of the officers of armes, to whom it concerneth properly.

N° XII.

Of the ſame.

By ANONYMOUS.

Firſt for antiquity.

ALFGARUS Stallere was the firſt conſtable in England by Mr. Francis Thinn's collection in Hollingſhed, p. 886, where he is thus named, viz. Alfgarus Stallere conſtable to Edward the Confeſſour, and continued till the Normans came.

Hereunto accord the auncient records of the priory of Lanthony in theſe words, viz. Be it remembered, that in the tyme of the conqueſt of England the great lord called

Algere Staller was earle of Eſſex, lord of Pleſſeys, and conſtable of England. After whom Walter, ſonn of Roger of Glouceſter, was made conſtable of England by the will and conſent of the king and his lords then being; and the ſayd Walter to haue the ſaid conſtabulary for him and his heyres for euer. After him Milo, ſonn of the ſaid Walter, was conſtable of England, the which Milo king Henry the ſonn of William the conquerour did create earle of Hereford, and gaue to him and to his heyres all the forreſt of Dene with the conſtabulary of England. The which marryed Sibille the daughter of Barnard lord of Newmarkett, with whom he had the lordſhipp of Brechnock, and founded this houſe of Lanthony next Glouceſter the 25th day of May in the yeare of our Lord M,C,XXXV. the firſt yeare of the raigne of king Stephen, and lyeth buryed in the midſt of the chapter houſe of Lanthony aforeſayd, with his wife Sibille on his right ſide, att the feete of Henry her ſecond ſonn. By which record and pedigree the ſame office is in that tyme deduced downe lineally to Edmond earle of Stafford in the right of Anne his wife, daughter and heyre of Thomas of Woodſtock duke of Glouceſter, by Elianor his wife, eldeſt daughter and heyre of the tenth Humfrey de Bohun earle of Hereford, Eſſex, and Northampton, lord of Brecknock, and conſtable of England. And for the laſt conſtable of England, I muſt alſo end, as Mr. Thinn doeth, with Edmond the laſt duke of Buckingham, according to his ſtile made ouer the top of his caſtlegate of Thornebury in Glouceſterſhire, which he began to build not many yeares before his end, viz. "this gate was begun anno domini 1511, "and anno regis Henrici octaui 2. by me Edward duke "of Buckingham, earle of Hereford, Stafford, and Nor- "thampton, high conſtable of England."

For the authority, juriſdiction, and honour of the office, and etimology of the word, I will leaue it to diuerſe preſent of greater reading, who can beſt deale therewith.

Authority

Authority and gouernment in peace.

I will adde, that the conſtable of England ſeemeth to be a great officer and conſeruator of the peace of the realme, by his place *ex officio*, as Mr. Lambard ſheweth in his booke of juſtice of peace, in the title, of ſuch as had the conceruation of the peace by the common law, fol. 11. cap. 3. ſhewing there what he may doe in that behalfe.

Juriſdiction for juſtice and judgement in peace and warre.

The conſtable is alſo an high and a ſpeciall judge, determining matters of great importance and excellency, for the which it ſeemeth he had power by his office of auncient tyme, and confirmed by the ſtatute of 13 R. 2. cap. 1. in theſe words, viz. to the conſtable it apperteyneth to haue cognizance of contracts touching deedes of armes, and of warr out of the realme, and alſo of things that touch warr within the realme, which may not be determined nor diſcuſſed by the common law, nor other vſages and cuſtomes to the ſame matters perteyning, which other conſtables heretofore haue duely, and reaſonably vſed in their tyme, &c.

Honour and dignity as well in counſells and aſſemblys as otherwiſe.

His place was of greateſt honour and eſteeme, and in precedence high, which the ſtatute of 31 H. 8. cap. 8. doeth demonſtrate, and rather, as it ſeemeth, qualify from that which had bin aunciently then otherwiſe, allowing the conſtable being of equal ranke and degree of honour, to haue ſeate firſt of theſe ſix great officers, viz. conſtable, earle marſhall of England, lord great chamberlayne of England, lord admirall of England, lord ſteward or great maſter of the houſehold, and lord chamberlayne of the houſehold, by which act it ſeems the lord priuy ſeale gained place, and was ſett higher then aforetyme.

Nº XIII.

Of the ſame.

By ANONYMOUS.

TO the conſtable it perteyneth to haue cogniſance of contracts touching deedes of armes, and of warr out of the realme, and alſo of things that touch warr within the realme, which may not be determined nor diſcuſſed by the common law nor other vſages, and cuſtoms to the ſame matter perteyning, which other conſtables heretofore haue duely and reaſonably uſed in their tyme, joyning to the ſame, that euery plantiffe ſhall declare plainely his matter in his petition, afore that any man be ſent for to anſwer thereunto. And if any will complayne, that any plea be commenced before the conſtable and marſhall, that might be tryed by the law of the land, the ſame complaynant ſhall haue a priuye ſeale of the king, without difficulty, directed to the ſayd conſtable and marſhall, to ſurceaſe in that plea till it be diſcuſſed by the king's councell [if that matter ought, and of right pertayneth to that court] or otherwiſe to be tryed by the common law of the realme of England, and alſo that they ſurceaſe in the mean tyme, anno 13 R. 2. cap. 2.

Becauſe of diuers great inconueniencyes and miſcheiſes that haue happened diuers tymes by reaſon of diuers appeales made within the realme; it is, &c. that from henceforth all the appeales to be made of things done within the realme ſhall be tryed, and determined by the good laws of the realme made and uſed in the tyme of the king's noble progenitours; and that all the appeales to be made out of the realme of England, ſhall be tryed and determined before the conſtable and marſhall of England for the tyme being. And moreouer it is accorded and aſſented, that noe appeales be from henceforth made, or in any-wiſe purſued in the parliament in any tyme to come anno 1 H. 4. cap. 14.

One

One Adam Pountency ſued againſt Matthew Borney, knight, in the court of the conſtable and marſhall, and demands anno 1020, by an obligation which he ſheweth forth, bearing date in Bourdeaux, which is in Gaſcony, and the obligation recites, *quas de mutuo*, &c. and declares out of his bill, a libell how he had payd the ſayd ſumme to the ſouldiers of the ſayd Matthew in Burdeaux, and ſhews how euery ſumme was payd, and to what perſons. And vpon this in the tyme of king Richard, a letter vnder the priuy ſeale was directed to the court, to ſurceaſe by force of the ſtatute made of the juriſdiction of the ſame court in the 13th yeare of the ſame king. Vpon which the plaintiffe ſued vnto the councell of the ſayd king, and a writt was graunted to proceed, wherefore they proceeded forwards in the plea, vntill he had judgement to recouer. And note, that the procedendo made mention of all the names of the biſhops and knights which were of the councell of the ſayd king; but it made noe mention, that any juſtices were in preſence att the tyme that this procedendo was graunted. And now lately John Tiptofte and others, which were tenants of the land of the ſaid Sir Matthew ſued a letter vnder the priuy ſeale directed to the ſaid Conſtable, &c. to ſurceaſe from execution; and vpon this matter, ſuite was made to the councell of the king, and by the councell committed to the juſtices. And now in the Exchequer chamber Fulthorpe, knight, which is the vnder conſtable, ſayd, that if this matter be not determinable by the common law, then is it remittable vnto our court againe; for the ſtatute wills, ſi, &c. Soe doeth not this poynt, wherefore, &c Therning: noe, Sir, and we ſhall ſee if it perteyned to your juriſdiction; for if it doe not apperteyne to your court, nor to the court of the king, then you ſhall not haue a procedendo, as are many caſes in our laws, in which it behoueth a man, that would haue action of them, that he haue a deed to ſhew, as where debts ſhall be demanded againſt the executours, and where a man is to demand land by a formedon in the remaynder. And without

out deed in theſe caſes, and other like, a man ſhall not haue action in our law, and yet if ſuch actions be conceaued in your court, and a writt of ſuperſedeas be directed, you ſhall not haue a writt of procedendo; wherefore neither in this caſe, and a multo potiore here, becauſe that the plaintiff may well recouer, and haue ſaued himſelfe by the common law at Burdeaux vpon this obligation, wherefore, &c. Gaſcoigne: truely if this were the firſt ſuperſedeas that went forth, a man would not ſay, that of reaſon noe procedendo ſhould goe forth. Culpepper: if an obligation were made at Callis, where ſhould this . . . . . diceret at the common law at Callis. Fulthorpe: we uſe to pleade . . . . . the clarks of the ſame court: if peraduenture Sir Matthew ſhould . . . . . and ſhould haue nothing in Gaſcoine which might be put in execution . . . . . plaintiffe ſhall neuer haue aduantage by this ſuite there made; but . . . . . our court; for we can make execution. Therning: the ſame reaſon . . . . when a man of Bourdeaux is bound by an obligation here, and after . . . and leagues noe goods here, per conſequence the ſuite ſhould be made here . . . . court, *quod falſum eſt pur' que*, &c. Fulthorpe: if a man were in the quarters of the biſhop of Rome, or in other places, or in pilgrimage, and he borrow goods of his companions, and of this he make an obligation, bearing date then . . . to be pleaded in our court, and if the party defendant doe deny . . . . . haue noe proofes that will witneſs this to be the deed of the . . . . . in our court with the defendant in proofe, that his ſayd ſuite is true . . . . . to be greuios, that a man ſhould combate for a debt . . . . . for . . battell, and combate ſhould be vpon this, that the defendant . . . . . in his defence. And note, that ſome men hold diuerſily . . . . . within the power of the king, in which caſe the ſuite ſhall be . . . . . law; and where it is made out of the power of the . . . . . in the court of the conſtable. Jerebie ſayd, how a . . . . . leiges of our ſoueraigne lord the king in the land of . . . . . of him, that was killed, ſued an appeale of his death in . . . . . here in England, &c. Vide ſtatutum de anno 13 H. 4. C . . .

In

In an action of treſpaſs brought by John Paſton againſt Ro. Ledham for an aſſault, and menacing; the defendant, ſayes, that the plaintiffe called him traytour .... *quod mentiris in capite tuo*, and that if he the plaintiffe would appeare ... that he the defendant would defend himſelfe by his hands vpon the .... during the life of one of them according to the forme of the law ..... ſame menacing whereof the action was brought, which ..... inſufficient in law, becauſe the defendant had alleadged ..... in fact, nor in law, whereupon confeſſing, or trau ..... Wherefore he amended his plea, and added, that he w ..... ſayd defence, then that the plaintiffe ſhould kill him ..... in our law; for by ſuch words noe ſuch plea doeth ..... conſequence noe ſuch defence can be made for ſuch ..... conſtable and marſhall, and he ſhall determine this ..... we cannot take notice, and ſoe noe ſuch appeale lyes by .....by conſequent noe ſuch defence. And although we ſhould ..... law, as wee ſhall not, yet it is noe plea, that he ſayes that ..... ſelfe during the life of one of them, the which is not law .... if they were in the field to fight togeather, if the one would take ano .... not lawfull for him to kill him, for he ſhall be drawne and quartered .... the king pardon him. In which caſe he cannot defend himſelfe .... of one of them, *cauſa qua ſupra*. Nedham: to this that you ..... take notice of the law of the conſtable and the marſhall ..... is the law of the land, and of our lord the king, but it ..... before the conſtable and the marſhall, but we ſhall take ..... one be appealed of the death of a man, and he ſayes that he ..... ſuch a day, and had him before the conſtable and marſhall ..... fought together in the feild, and ſo doeing there, he hurt ..... juſtification for our law purque &c. and that it ſhall bee vnderſtood prima facie, that one kills the other, and not that one take the other. Aſhton and Moile: we ſhall take notice of this as of the law of the holy church. Priſot: in the caſe which Nedham putts, we ſhall write to them to know whether it bee

37 H. 6. fol. 3. and continued fol. 19. 6.

ſoe or noe, and according to that we ſhall doe; *quod nota & adjornatur.*

If appeale of murder be brought in the king's bench, and the defendant joyne battell, this ſhall be tryed before the juſtices of the king's bench, and not before the conſtable and marſhall.

N° XIV.

Of the ſame.

By Mr. HOLLAND.

27° Octobris 1602.

IT appeareth by Mr. Lambard in his book of the dutyes of conſtables, that the name of conſtable is made of two Engliſh words put togeather, namely koning and ſtapele, which doeth ſignify the ſtay or hold of the king: for by the auncient cuſtome of this realme there is a great officer called the conſtable of England, and this man had juriſdiction and authority in deeds of armes and matters of warre, boeth within the realme and without. After the ſtatute of Wincheſter, which was made in the tyme of king Edward the firſt, did ordayne lower conſtables of hundreds and franchiſes, then the other was called the high conſtable in compariſon of the other conſtables that were vnder him.

I fynd in the exchequer *in libro in quo ſcribuntur hominum liberaciones, qui fuerint cum Rege Henrico filio imperatricis*, that king Edward the third commanded the treaſurer and barons of the Exchequer to ſearch, whither Humphrey de Bohun, earle of Hereford and Eſſex, and conſtable of England, and his predeceſſours, of right receaued, and ought ſoe to doe, in right of his office of conſtable, two pence of euery pound ſtipendary in the king's hoſt.

Whereunto the barons of the Exchequer did anſwer, that the earle of Hereford receaued as conſtable two pence of euery pound ſtypendarye of euery man of armes in the king's hoſt.

In the tyme of king Henry the eigth the duke of Buckingham did challenge that office, and the caſe was thus: Humfrey de Bohun earle of Hereford and Eſſex held the mannours of Hartfeild, Newenham, and Whettenhurſt in the county of Glouceſter of the king, by the ſeruice of being lord high conſtable of England: he dying, left two daughters, betweene whom partition was made of the ſayd mannours; and the ſaid office being a ſeruice by reaſon of the ſaid tenures, the ſame deſcended vnto boeth daughters, to be exerciſed by their ſufficient deputy, while they were vnmarryed; but after their marriage the ſame was onely to be exerciſed by the huſband of the eldeſt daughter. By the attaynder of the ſayd Duke of Buckingham the ſayd office came vnto the king, and reſteth in the crowne att this day.

Conſtabularij Angliæ.

Hugo de Mortuomari Dominus de Wigmore conſtitutus conſtabularius Angliæ ab ipſo conqueſtore.

Walterus de Glouceſtr. conſtitutus conſtabularius Angliæ per regem Henricum primum.

Robertus de Oillio Baro de Hocnorton conſtitutus conſtabularius Angliæ per Stephanum regem anno 1°.

Milo de Glouceſtr. filius præfati Walteri factus fuit ſummus Angliæ conſtabularius poſt mortem patris ſui per Henricum ſeniorem, deinde ad idem officium reſtitutus apud Briſtoll, per imperatricem Matildam, cum primo in Angliam veniſſet poſt mortem Henrici regis prætoris ſui; deinde per eandem gladio comitatis Herefordiæ cinctus eſt die ſancti Jacobi Apoſtoli Oxoniæ, anno Domini 1141. *Duxit in vxorem Sibillam filiam Bernardi de Nouomercato, baronis Breconiæ, & Agnetis vxoris ejus, ex qua genuit Rogerum, Walterum, Henricum, Nicholaum, Willielmum, Margeriam, Bertam, & Lucianam. Fundauit prioratum l'Antoniæ*

juxta Glouceſtr. anno 1°. *Stephani regis. obijt in vigilijs natalis domini anno* 1143. *Sepultus eſt in dicto prioratu.*

Willielmus de Bello campo filius Walteri de Bello campo vicecomes Wigmor, factus fuit conſtabularius Angliæ per Stephanum regem anno 4. *regni ſui depoſito prius Milone de Glouceſt. ab officio prædicto.*

Rogerus comes Hereford. filius comitis Milonis primogenitus, & Sibillæ vxoris ſuæ, fuit conſtabularius, & obijt ſine prole anno Domini 1156.

Walterus de Hereford. frater prædicti comitis Rogeri, factus fuit conſtabularius Angliæ poſt mortem fratris qui fuit comes in officio illo dum ſtetit, & obijt ſine prole.

Henricus de Hereforde.

Mahelus de Hereforde.

Willielmus de Hereforde.

Humfredus de Bohun ejus nominis a conqueſtore tertius, filius Humfredi ſecundi & Matildæ vxoris ejus filiæ Edwardi de Saliſbury, duxit Margeriam filiam primogenitam Milonis comitis Hereford. & ſororem dictorum fratrum ſuorum cujus jure factus eſt tam comes Hereford. quam conſtabularius Angliæ, ex qua genuit Humfredum de Bohun 4*tum & obijt. Et Margeria prædicta obijt.* 6 *Aprilis anno* 1187. *Sepulta eſt in prioratu prædicto.*

Humfredus de Bohun 4*tus. comes Hereford. & conſtab. Angliæ accepit in vxorem Margaretam comitiſſam Britann. ſororem Willielmi regis Scotorum ex qua genuit Henricum de Bohun comit. Hereford. obijt anno . . . ſepultus vt ſupra.*

Henricus de Bohun comes Hereford. & conſtab. Angliæ filius Humfredi 4*ti. duxit in vxorem Matildam filiam Galfridi filij Petri comit. Eſſexiæ, ſummi Angliæ juſtitiarii & hared. Galfridi & Willielmi de Magna villa comit. Eſſex. fratrum ſuorum ex qua genuit Humfredum* 5*um & Henricum de Bohun, &c.*

Humfredus de Bohun 5*us comes Hereford. & Eſſex conſtab. Angliæ, dictus bonus comes, duxit in vxorem primo Matildam filiam comitis de Ew, ex qua genuit Humfredum captum in bello contra regem Henricum* 3*tum, quarto die Auguſt. anno* 1265. *& in Beſtonienſi Caſtello Caſtrenſis pro-*

uinciæ

uinciæ qui incarceratus obijt, Matildam nuptam Anſelmo quinto Mareſcallorum fratri, Aliciam nupt. domino de Tonneio. Sepult. in prioratu prædicto.

Humfredus de Bohun 7tus filius Humfredi ſexti, & Alienoræ quartæ filiarum & hæredum Willielmi de Breoſa domini de Brecknock, comes Hereford. & Eſſex.

Humfredus de Bohun octavus.

Johannes de Bello Monte dominus de Folkingham. 15 E. 2.

Johannes de Bohun filius Humfredi de Bohun octaui.

Edwardus de Bohun. Anno 4. E. 3.

Humfredus de Bohun decimus.

Willielmus de Bohun comes Northampt. Anno 12. E. 3.

Humfredus de Bohun vndecimus.

Themæ de Woodſtock conceſſum officium conſtabularij Angliæ. Anno 34. E. 3.

N° XV.

Of the ſame.

By Mr. AGARDE.

I HAUE not found in all the hiſtoryes of the auncient Brittons, Saxons, nor Danes, which heretofore were poſſeſſours of theſe realmes, the name of conſtable, neither his office, nor authoritye to be ſett out. The firſt I fynd mentioned with vs is in the conquerour's tyme, and I am certayne, that that name was not uſed before, neither any officer knowne by it, nor what his authority was. That, which our common conſtables do uſe, that is, to be an officer for the preſeruation of the peace in ſome towne or village where he dwelleth, and to attache all ſuch that ſhall infringe the ſame; and further to arreſt all felons, murtherers, or ſuſpected perſons, ſearch their houſes, lodgings, and places of reſort, and them and their goods to put in ſafe cuſtody, and impriſion, vntil they ſhall be deliuered by law, is the ſame as in Canutus the Dane's laws is ſet downe by theſe words: *Et ſi quis centenario adeo ſuſpectus eſt, adeoq. calumnioſus,*

nioſus, vt atribus calumpniatoribus calumpnietur, tunc nichil aliud fiat, niſi quod ad triplex Dei judicium adeat. Where I note, that *centenarius* is to be taken here for, or inſtead of him, that we call cheife conſtable of the hundred. Againe, in another place in the ſame laws, wherein is appointed how a theife ought to be purſued and taken, are theſe words: *Hæc eſt conſiliacio, quomodo centenarij conventus obſeruari debeant. Primum quidem quod circa quatuor ſeptimanas congregetur, & quiſque alij rectum faciat. Quod ſi neceſſitas inſtet, primum nuncietur concionatori centenarij, qui deinde decimacionarijs omneſque profiſcantur quoſque ducatu Dei perveniant, quo cupiunt, furi quidem, quod rectum eſt, faciant ſecundum quod ante ab Edmundo conſtitutum eſt.* Soe as I ſuppoſe, that that office, which wee call conſtable, was called by them *decimacionarius*; and in that ſence in ſome countreys here in England he is called yet *tything man.*

But leauing the courſe of the laws before the conqueſt; let vs come to that which the conquerour did after he was lord of all, and crowned for the preſeruation of the peace and quiett of the realme, as it is ſett downe boeth in the hiſtory of Normandy, and in the Redd and Blacke bookes of the Exchequer and Treaſury, with which bookes I will firſt begin, reciting that which I am afrayd ſome will ſay, I haue too often vouched, that is, that he cauſed a view to be made of the laws uſed in this realme before he came, conteyned in theſe three, viz. *Merchenlage*, *Danelage*, and *Weſtſaxenlege*, *quarum quaſdam approbans quaſdam vero reprobans, illis tranſmarinas Neuſtriæ leges, quæ ad regni pacem tuendam efficaciſſima videbantur adjecit*, and with this agreeth the hiſtory of Normandy, that the conquerour, to winne the fauour of the people, did yeeld to them to be gouerned by St. Edward's laws. And yet, that hee might the better ouer-rule, he followed the courſe of the French and Norman gouernment. That was, in appointing ſtately offices to high and noble perſonages, knowing this to be a cheife poynt in gouernment, to haue authority regarded: as it is ſet downe in the præamble of the ſayd Black booke.

Porro

Porro nobilium copia, vel defectus, principum poteſtates humiliat, vel exaltat. Quibus enim hæc deſunt, hoſtibus præda fiunt. Quibus autem hæc ſuppetunt, hijs hoſtes in prædam cedunt. Soe the conquerour created three ſpeciall officers to haue regard to the quiet ſtate of the realme for martial affayres, as it ſeemeth by the ſayd ſtory of Normandy, by theſe words: *Le roy Guillaume le Baſtard fiſt Hugh de Mortimer ſon coneſtable d'Angleterre le quell . . . eſtoyt ſon parent de per ſon pere. Et le conte Roger de Montgomery, & le preux Guillaume le Fitz Oſberne ces deux ils fait Mareſchalls d'Angleterre.* Soe this is the firſt name of conſtable I doe reade of. Of the etimology of the name, I leaue it to them that are better ſkilled with the French then I. Yet, as I remember, there is an author, whether it be Bodine or other, which I reade a great while agoe, which defineth it thus: *Cuſtos ſtabuli.* I muſt diuide them into theſe foure ſorts,

I. *High conſtable of England.*
II. *Conſtables of caſtles, and their libertyes.*
III. *Conſtables of hundreds.*
IV. *Conſtables of townes and libertyes.*

Of euery of which, as I haue reade and conceaued, and ſoe of the firſt.

By the firſt inſtitution of high conſtable of England, I fynd in the Black booke, his authority was great, and reached farr. For in the Exchequer [being the cheife place for adminiſtration of juſtice for the whole realme] he is the third perſon to be placed in the court, by his ſeate after *capitalis juſtitia*, and *cancellarius*, then *conſtabularius*, and he is called *miles gregarius*, which is as much as to ſay a *froward and valiant knight*. After him the two chamberlaynes and miles, *qui vulgo dicitur mareſcallus*. Theſe are all that are mencioned to ſitt on the high bench; where note by the way, that the king was minded to haue ſome martiall men, to be raunged among his peaceable magiſtrates. But of the authority and practice of his office is ſett downe to this effect: that he is witneſs to the king's writts togeather with the king's juſtice. *Quia in omnibus breuibus oportet conſcribi teſtes.* And alſo, that he taking with

with him the mareſchall and his owne clerke, ſhall take the accounts of all ſtipendary ſouldiers ſeruing in garriſon, or otherwiſe, and to giue them allowance, or to caſs their payments. And the like he is to doe to the officers *accipitrariorum ſeu falconariorum ſiue bernariorum*, except the king haue otherwiſe appointed ſome other to haue done that, which the auƈthour ſayth he may doe. *Conſtabularius a rege non poteſt facile avelli propter majora, & magis vrgentia:* this ſtood good in king Henry the ſecond's time; but how they haue uſed or abuſed that high office after that tyme, whereby it is wholly extinguiſhed boeth in the exchequer and the realme, I leaue it to others.

To the ſecond, that is to the conſtables of honours and caſtles, and ſo of the liberties of the ſame belonging, we reade in ſundry ſtoryes and records of *conſtabularius caſtri Douer, turris London, conſtabularius Ceſtriæ, &c.* in which conſtables hands was the whole gouernment of that honour or caſtle.

For the two laſt, viz. conſtables of hundreds, and other inferiour conſtables, we haue the exerciſes of their offices ſoe daily in experience, that I need not to ſpeake thereof: for their antiquity, the firſt I read of is in a pleading in the king's-bench in trinity terme anno xv^to^ Edwardi primi, which I haue abbreuiated out of the ſame record thus. Buck. Rolle. 7. *Conſtabularius, qui venit ſuper huteſium leuatum, & petijt a malefaƈtore, quod ſe redderet juſticiario, qui recuſauit ſe ſubdere conſtabulario, per quod per conſtabularium captus fuit, & impriſonatus, nunc per juratores acquietatur, & adjudicatur, quod eat ſine die.*

N° XVI.

Of the ſame.

By Mr. LEIGH.

WE find, in the writers of politicks, that it is required of a prince or monarch, that in his owne perſon he ſhould not be ignorant of the two maine practices of gouernment, that is, warr and peace.

Yet we ſee, that in thoſe commonwealths that are moſt plentifull of worthy citizens, the ſelfe ſame men are neuer employed in boeth theſe ſeruices, but the offices of peace are ſtill managed by the crowne-men, and the buſineſſes of warr are onely impoſed vpon thoſe that are brought up in that courſe of life: ſo by this it appeareth, that the burthen of the prince is double to that of his ſeruants and miniſter vnder him.

Hereupon princes haue, and doe uſe to helpe and eaſe themſelues in their gouernments, by conſtituting great officers diſtinctly and ſeuerally boeth in matters of warr and matters of peace, that may with them beare part of their burthen. In England the high conſtable is an officer of great honour and authority, appointed and ordeyned in the beginning for the aſſiſtance of the king in martial affayres, and came into this realme out of France, as is moſt likely, and to them out of the empire: for that deriuation of the name, which Mr. Lambard draweth from the old Saxon, in my opinion is not ſoe likely as that which we may take from the Latine, which is *comes ſtabuli*, the leiutenant of the horſe: for *comes* ſignifyed the ſame in the tymes of the Roman empire, that *Legatus* did in the beginning, as Roſinus in the booke de antiquitat. Roman. lib. 10. cap. 7. noteth: ſoe that the word is *leiutenant of the ſtable*, and this was the very nature of the office at the beginning, for he is called *magiſter equitum* by Vincentius Lupanus, a learned writer *de magiſtratib. Franciæ*.

This kind of title is warranted by the like titles of many other offices, where the cheife and principall is called *comes*, as *comes ſacri palatij* is the great maſter; *comes ſacrarum largitionum*, he that beareth the king's purſe for rewards; *comes ſacri patrimonij*, the atturney of the generall, and priuate patrimony, as our attorney of the dutchy.

The greatneſs of theſe officers hath bin a cauſe of much trouble to their princes in France. It turned the family of Clodoueus out of the poſſeſſion of the crowne, and brought in king Pipin: and Charlemaine's poſterity loſt the crowne of France, by it, to the Capetts.

In France the conſtable is ranked the fourth from the king, as the ſecond is the daulphin, the third regens, which is an office in uſe onely when the king is an infant or mad, the fourth the conſtable. This greatneſs mad hem ouerbold with their princes, and ſoe grew odious; for Lewis the 11th made a law, that none ſhould be called conſtable of France. Charles the 8th reſtored the office and granted it to John of Burbon; Francis the firſt to Charles of Burbon; but he reuolted to Charles the 5th emperour; and Memorancy was the next that had it.

We haue not bin free in England from tumults rayſed by theſe great officers; but I omitt to recite our chronicles, which are ſo well knowne to all this company.

Yet the office of the conſtable of England is not ſoe great, either in place or juriſdiction, with us as with them; for I doe not thinke but that the ſtatute of 31 Henry 8. cap. 10. had an imitation of the auncient cuſtome of the realme, in appoynting the places of the great lords: and by that, the officers of peace are firſt placed, then the officers of warr; as the chancellour, treaſurer, preſident of the councell, lord priuy-ſeale; then the officers of warr, as the chamberlaine of England, the conſtable, the mareſchall, the admiral.

His juriſdiction with vs is limitted by the ſtatute of Richard 2. anno 13. cap. 2. that he ſhall meddle onely in contracts concerning deedes of armes without the realme and within. Beſides it was not in this realme beſtowed on

ſpeciall

ſpeciall men for their ſingularity of ability to execute it, but might haue runne to a mad-man or a foole by our law, for it was inheritable by deſcent, and belonged to the family of Bohun's, earles of Hereford and Eſſex, as the tenure of the mannours of Harfield, Newenham, and Whittenhurſt, and by that meanes deſcended by Mary and Elianour, the two daughters and heyres of Humphrey Bohun, earle of Hereford and Eſſex, and conſtable of England, to Henry the 4th, and to the dukes of Buckingham, whereupon in the 11th of Elizabeth, in my lord Dier, three queſtions were reſolued in our law.

I. *That this is a good tenure reſerued at the firſt, to hold land by being high conſtable of England.*

II. *That the coheyres before marriage might execute the office by deputy, and after marriage the huſband of the eldeſt ſhould doe it alone.*

III. *That part of the office being deuolued to the king, as heyre to one of the coparceners, the heyre of the other coparcener might exerciſe it himſelfe alone.*

But king Henry the 8th, in the 6th yeare of his raigne did diſclayme to haue the ſeruice performed, becauſe it was high and dangerous.

The caſe is diſcuſſed more in Mr. Recorder's booke of reports, 6 Henry 8th. where it is agreed to be grand ſergeanty, and the king himſelfe being in place with the judges, this conference was between them: Neuill. It hath bin a common ſaying, that the conſtable of England by virtue of his office may arreſt the king. Fineux. We know not of any ſuch authority belonging to any officer of the realme, by the common law of the realme: king Henry the 8th. what things may the conſtable of England doe by reaſon of his office? Fineux. Sir, this poynt apperteyneth to your law of armes, of which we haue noe knowledge.

By this it appeareth, that the office was ſuppoſed to bee of greater power than the judges of the realme did admitt, as to arreſt the king, which was an idle tradition, and diſ-

proued by them in their graue cenſure: and that the juriſdiction of the conſtable is in the exerciſe of the martiall law.

This little I can ſay of the originall, etimology, nature, and quality of this office of high conſtable, and of the juriſdiction of it in our common wealth. What may more be ſayd of the antiquity of it, I leaue to my maſters, that are to ſpeake after mee, that are better acquaynted in that poynt, then I am.

N° XVII.

Of the ſame.

By . . . ANONYMOUS.

I SUPPOSE it out of queſtion, that the conſtables office is, to deale in all matters and cauſes military, but whereof he hath his name, it hath bin ſome queſtion. Some will haue him called *coneſtabilis*, *quaſi comes ſtabuli*, and ſome *comes ſtabilis*, *quaſi comes ſtabiliens*, as it were the perſon that vnderproppeth or ſtrengtheneth the king, boeth which may well ſtand togeather, and that he tooke name of them boeth, although I rather thinke of the firſt, becauſe the ſtrength of military ſeruice conſiſteth moſt of horſe, is as it were the eſtabliſhing and ſtrengthening of the king.

This officer, according to the diuerſity of nations and tymes, obteyned diuerſe names, being called *coneſtabilis*, *tribunus celerum*, *tribunus militum*, *magiſter equitum*, *tribunus equitum*, *princeps militum & præpoſitus militiæ*, by which laſt name ſome ciuilians haue not doubted, to call Michaell the archangell the conſtable of God, becauſe he was *princeps & præpoſitus militiæ* againſt Lucifer. Of the antiquity, of the diuers names, and of the office, of whom I will ſay ſomewhat, as they were amongſt the Hebrews, Greekes, Romanes, French, Saxons, and Engliſh.

Touching the antiquity, there is noe doubt but the ſame officer is as auncient as there hath bin battels, and directours of battels; but how they were in the infancy of the world termed, I know not: but after, when the people of the Jews, and other nations were growne to a ſettled gouernment vnder kings, then this ſupreme gouernour of the army vnder kings had one eſpeciall title, and was, called *princeps militiæ*, as was Nebuchodonoſor vnder the kings of the Aſſyrians, Judith 2. Abner vnder Saul. 1 Reg. cap. ult. Joab vnder Dauid. 2 Reg. 9. Naaman vnder the king of Aſſyria. 4 Reg. cap. 5. &c. who being *principes militiæ* had the ſame authority that the conſtables ſynce haue had ouer their ſouldiers and battells: the Greekes alſo wanted not this officer, called ἵππαρχος, or *princeps equorum*; this ἵππαρχος did carry the ſword before the emperour, according to that notable ſaying out of Dion and Suidas, that when Trajane deliuered the ſword to the bearer he ſaid; *en, accipe gladium, & ſi recte imperauero, pro me, ſin minus, in me vtaris*; being a poeſy which the young king of Scotts in the beginning of his raigne ſett upon his coyne. After the remoue of the Roman empire to Conſtantinople, and that it was diuided into the eaſt and weſt, they had the ſame officer as the conſtable, as appeareth by Curopalates, who called him ὁ μεγας κοντοσαῦλος, whom Procopius [as hath Pyrrhus] called ὁ προτοσσαθάριος, as the cheife that dealt with the ſword and carryed the ſword. The Romans had the like officer called *tribunus celerum, tribunus militum, magiſter equitum, præfectus prætorij*. For all theſe were the names of one principall officer, which had in ſeuerall ages the direction of military affayres, as had our conſtable; and that all theſe officers were one, Feneſtella reporteth, c. 2. 9. 22. whoſe words for breuity ſake I omitt. But after the tyme of Conſtantine the great, when the names of officers began to be altered, and that his domeſticall officers were entitled *comites palatij, comites horreorum ſcholarum*, &c. this officer hauing the charge of the ſouldiers and the warr, which conſiſted in horſe, was alſo called *comes ſtabuli*.

Amongſt

Amongſt the French this officer was alſo called *comes ſtabuli*, whence is deduced *coneſtable*, as hath Procopius, who mentions the conſtables of the kings of France, Cherebert and Childerick. This conſtable was amongſt them the cheifeſt of the army, if the king were not in perſon. His office was to deale in all martiall matters in the army, and to haue the ouerſight and rule, as hath Bell-forreſt, of the harolds, of blazon of armes, of trumpets, of all actions of the ſouldiers, &c. For the full declaration of his authority I referre you to Bellforeſt, Tillius, and Lupanus, who treate thereof. This officer in French is called *le grand eſquire*, or *magnus ſcutarius*, hauing his ſeate of juſtice in the king's pallace att the marble table; the forme of making which conſtable in France was, that the king deliuered him a ſword ſett with lillyes, and tooke a ſolemne oath of him.

The Saxons likewiſe had this officer by the name of *dux*, who was the king's leiutenant in euery countrey for the men of warre, to leade them to battell, and to judge all cauſes thereunto belonging. This duke was amongſt them in their language called *ſtalhere*, as it were lord of the ſtable; for the Saxons call that a *ſtall* which we call a ſtable, and *here* ſignifyeth lord; though *hertzog* be the name of a duke of honour, yet *ſtalhere* was *dux, a ducendo exercitu*; in Latine he is called *vexillifer regis*, which is the office of coneſtable; for he is to beare the king's ſtandard in the warrs. Of this *ſtalhere* I fynd three authorityes: the booke of Ely ſayth *de famoſa villa Eſtre alio nomine Plaſq vocata, miſere ab Ely eſt diſtracta: Algarus quidem ſtalhere, quod Latine dux dicitur, eam invaſit.* Secondly, the booke of Waltham ſayth; *Eſgarus regiæ procurator aulæ Edwardi, qui & Anglice dictus ſtalhere, id eſt, regni vexillifer.* Thirdly, I fynd in an old anonymall, *Godricus & Edmundus filii regis Haroldi de Hibernia redeuntes, in Sommerſet applicuerunt, quibus Adnothus domini regis Haroldi ſtalherus occurrit cum exercitu.*

To auoyd tedioufneſs I come from the Saxons to the Normans; the name of conſtable amongſt them being meere

meere French, came into England with the conquerour; for amongſt other laws of his, this is one, that if a Frenchman doe appeale an Engliſhman of perjury, robbery, or murther, the Engliſh may defend himſelfe by combate, which was then termed *an Engliſh earneſt*, a word which we keep to this day; and foraſmuch as the thing itſelfe was neuer before permitted by law, it is to be granted, that there was then ſome officer appoynted, to ſee that performed, which was the conſtable, which may appeare not onely by hiſtory, but by ſpeciall preſident, that I haue ſeene of the whole order of proceeding before him in that behalfe. Of his authority, Fleta hath liberally diſcourſed in his officers of England, whereunto I referre you, and will onely touch ſuch few records as I fynd touching this office. The office of conſtable [if there were any] for there was none ſynce the beheading of the laſt conſtable, the duke of Buckingham, about 12 Henry 8. is to deale in all matter military, whereof he hath one ſpeciall court called *curia militaris*; this court and the marſhall's is all one; for the marſhall by the laws of England is but the conſtable's deputy, and what the conſtable may doe being preſent, the ſame the marſhall may doe in his abſence, of which conſtables court there is mention in the tyme of Henry 4. in an appeale made by John Chamberline, touching a judgement giuen by John Cheneys, knight, the conſtable's leiutenant in the military court about deteyning of a priſoner, clauſ. 2 Henry 4. membran. 5. That the harolds and matters of arms were ſubject to the conſtable's authority in England like as in France, you ſhall fynd in the records of the Tower. The controuerſy decided in the military court between Scroop and Groſſevenour for the bearing of the armes, azure, a bend or, and in a goodly booke of monuments of the controuerſy between Reginald Grey and Sir Edward Haſtings, for bearing the armes of Haſtings earle of Penbroke, determined in the conſtable's and marſhall's court in the tyme of Henry 4. moreouer in clauſe 2. Henry 4. parte 2. membran. 16. you ſhall fynd that Hugh Blowet, alias Bruce, harold of Scotland committed to priſon in the Tower of London, was brought

brought before the conſtable of England to receaue ſuch ſentence which ſhould be giuen vpon him, which proueth directly his authority in matters belonging to heraldry.

Laſtly, I will produce you one judgement of the conſtables in matters armouriall, belonging to ſome of my family, which is, that in 11 Henry 7. Stanley earle of Darby, coneſtable of England, in the king's chamber att Weſtminſter judicially determined, that Sir Thomas Aſhton, knight, ſhould beare for his proper armes, argent, a mullet vnpeirced of fiue poynts ſable, alone, or quarterly in the firſt quarter, if more armes by deſcent fall to his inheritance; and Sir Piers a Leigh, and his heyres, ſhall beare the ſame armes quarterly, ſoe they be not in the firſt quarter, with a bezant on the firſt poynt: foreſeene always, that if the aforeſaid Sir Piers can fynd, at any tyme hereafter, any ſufficient euidence with authority, and before the conſtable allowable, that then he, and his heyres may beare the ſame without the bezant, or other difference; preſent att this determination amongſt others garter and norroy, kings at armes, and alſo by commandment of the ſayd lord conſtable to the aforeſayd officers at armes, this preſent bill to be regiſtered in the bookes of authority from this tyme forth. And ſoe I conclude, omitting infinite matter that might concerne the conſtable, for that a catalogue of the conſtables of England by inheritance, and others of the princes grants is ſett downe in Hollingſhead, whereunto I referre you.

JUSTITIARIUS ANGLIÆ.

Juh. Sareſbur. Lib. Dunelmens. M. Paris. Houeden.

Juſtitiarius Angliæ eſt ſecundus a rege.
Juſtitiarius Angliæ ſecunda perſona regni.

When king Richard by his letters from Paleſtine ſuſpended the cheife juſtice William de Lonchamp from the execution of his office, he committed the charge and authority thereof to foure cheife barons of the kingdome in theſe words: *præcipimus vobis, vt ſecundum diſpoſitionem veſtram, tam de eſcheatis, quam de omnibus alijs agendis regni diſponatis.* This is confirmed by Houeden.

Per

Per juſtitiarium Angliæ omnia regni negotia terminabuntur. Jorvalenſis.

He called all accomptants, or ſheriffs, and their bayliffs to account. Radulphus de Diceto.

He is bound by his office to mainteyne and preſerue the writts of inueſtitures, and all other priuileges, and dignityes, and cuſtomes of the king and crowne. M. Paris.

Juſtitiarius Angliæ miniſtrabat tam de rebus perceptis, quam exceptis. Idem.

Walterus Theobaldus archiepiſcopus cantuarius, and chiefe juſtitiar leauyed an army, and went with it againſt the rebells in Wales. Camden.

The juſtitiars had the chiefe command of king Richard's fleet, when he went to the holy land [as Admirall] and had the charge of the king's navy, and all manner of affayres. M. Paris.

Hubert archiepiſcopus cantuarius tooke by force certaine offenders out of a church, or ſanctuary, and did juſtice vpon them. Chronic. Roſſens.

Hugo Bigot totius Angliæ capitalis juſtitiarius cæpit Angliam circuire a comitatu ad commitatum, a libertate ad libertatem, omnibus pro meritis impenſurus juſtitiam. Johannes Selden.

The cheife juſtice might direct a præcipe to the king, to require him to anſwer to ſuch a complaynt, or ſuit of a demandant. By theſe places it appeareth that the cheife juſtice at his pleaſure exerciſed the offices of the conſtable, of the marſhall, of the treaſurer, of the admirall, and of the cheife judge.

G. BUC.

N° XVIII.

The Antiquity and Office of the Earl Marſhall of England.

By Mr. CAMDEN.

SUCH is the vncertainety of etimologyes, that arguments drawne from them are of leaſt force, and therefore called by an auncient Græcian μάρτυρα ἀλαξονα, as proofes onely, which doe nothing but ſett a good face on the matter. Neuertheleſs, when as Plato will haue them admitted, if there be a conſonancy and correſpondency between the name of the thing, and the thing named, we will produce three etimologyes of this word mareſchall, wherein the name is or hath bin anſwerable to the office in ſome part or other in ſignification; for the word mareſchallus is uſed for a principall officer in the court, in the campe for a ferriar and an harbinger. The Germans, from whom the word was firſt borrowed, called him *mareſcalk*; the Latines mollifying the ſame, *mareſcallus*, the office *mareſcalcia*; the French *mareſcaux*; and wee marſhall; all deduced from the German *mareſcalk*, which, according to the receaued opinion, is compounded of *marc* or *mark*, which doe boeth, ſay they, ſignify an *Horſe*, and *ſcalke*, which doeth not ſignify ſkillfull, as ſome ſay, but an *officer*, *ſeruant*, or *attendant*; ſoe *God's ſcalke* is interpreted God's ſeruant, and in the old Germane *nunc demittas ſervum*, this word *ſervus* is tranſlated *ſcalk*, ſoe that joyntly the word notifyeth an *officer* and *attendant about horſes*. This etimology is confirmed firſt *ex legibus Alamannorum: ſi quis mareſcallum, qui duodecim equis præeſt, occidat. 40. ſol. componat.* Then out of Choniates, who writing the life of Baldwyne, emperour of Conſtantinople, ſayth, that this word *mareſcaldos* noteth him whom the Græcians called πρωτοστάτωρ, which according to the name doeth ſignify him which marcheth foremoſt before the army.

army. To mainteyne this etymology, they ſay, it may not ſeeme ſtrange that ſoe high an office as it is now, ſhould be deriued from horſes, when as all preferment in auncient tyme, as one ſayth, had the firſt riſe from the ſtable: and ſuch as were there brought vp, proued moſt ſeruiceable horſemen, and many other names which tyme hath aduanced to high dignity, had very meane and ſmall originalls. But this etimology lyeth open to ſome objections, as that the marſhalls now haue no command ouer the horſes, or ſtable. But certaine it is, that in diuers offices, albeit the functions are altered, the name remaineth. And as Varro writeth, *equiſo* among the Latines doeth not onely ſignify *maſter and ruler* of the horſes, but alſo of all other things committed to his charge; ſo it accordingly is to be ſuppoſed, this word *marſhall* not onely to ſignify an officer of horſes, but alſo of other ciuill and military matters appropriated to his function: it is ſayd alſo, that *mare* doeth not ſignify an horſe in the German tongue, but as in ours, that which is more ignoble in that kind, and that names are to be impoſed *a potiori*. And albeit it is moſt certaine out of Pauſanias, that *mare* ſignifyed an horſe to the old Gaules, as it doeth ſtill to our Britaines their deſcendants, yet they ſay it is vnfitting to compound one word of two different languages. But Quinctilian ſheweth the contrary in *epicedium*, *anticrato*, *biclinium*, *epitogium*, being compounds of Greeke, Latine, and other tongues: and to this etimology doe they incline, which will haue the marſhall to be called in Latine *magiſter equitum* rather then *tribunus militum*.

There is alſo another deduction of marſhall from *maer*, the Latine word *maior*, and *ſala*, which ſignifyeth a king's court in the High Dutch, for that they were *magiſtri domûs* and principall officers for ordering the court.

There is a third deriuation of this name from *mark*, as it ſignifieth a *marche*, *bound*, or *limitt*, and *ſcalk*, which is *miniſter*, as we ſayd before. From *mark* in this ſence we we haue *marchio* for a lord *marcher*, and *markgraue* in the very ſame ſence; and therefore he relyeth vpon this opinion,

which calleth the *marſhall* in Latine *prætor comitatus auguſtialis*, as being the ciuill judge within the limitts of the court, which we call now the verge, for that the verge or the rode of the marſhall's authority ſtretcheth ſoe farr; and they alſo, which haue the marſhall called in Latine *deſignator caſtrorum*, for it was incident to his office as it were an harbenger, and to appoynt limitts and lodgings boeth in warr and peace. Of theſe etimologyes happily one may be true, happily none.

When this word entered firſt into England I cannot reſolue; I dee not fynd that our Saxons uſed it, or any other name equiualent vnto it, vnleſs it was *ſtal-here*, which ſignifieth *maſter of the ſtable*, but that may ſeeme rather anſwerable to the name of conſtable. Yet Eſgar, who was *ſtalhere* to king Edward the confeſſour, writeth himſelfe in a donation to Waltham *regiæ procurator aulæ*. Whereas William Fitz Oſborne in the chronicles of Normandy is called the marſhall; I belieaue that William Tailleur the authour ſpake according to the tyme he liued in, and not according to the tyme he wrote of. Fauchett a learned man in the French antiquityes ſayth, the name of marſhall was firſt heard of about the tyme of Lewis le Groſſe, who was in tyme equall to our king Henry the firſt, and Stephen of England, and from thence doubtleſſe wee borrowed that name as many other.

The firſt authour that uſed the word in England, was Petrus Bleſenſis, chancellour, as he was then called, but indeed ſecretary to king Henry the ſecond of England, who uſed this word *mareſcallus* for a Harbenger, in theſe words complayning of them. *Epiſtola* 14. *vidi plurimos qui mareſcallis manum porrexerunt liberalem: hi dum hoſpitium poſt longi defatigationem itineris cum plurimo labore quæſiſſent, cum adhuc eſſent eorum epulæ ſemicrudæ, aut cum jam forte ſederent in menſa, quandoque etiam cum jam dormirent in ſtratis, mareſcalli ſupervenientes in ſuperbia & abuſione, abſciſſis equorum capiſtris, ejectiſque foras ſine delectu, & non ſine jactura farcinalis eos ab hoſpitijs turpiter ejiciebant, & expellebant.*

The

The firſt mention that I fynd of a marſhall in record, is in the Red booke of the exchequer written in the tyme of Henry the ſecond, which hath reference to the tyme of king Henry the firſt: *regis avus*, that is king Henry the firſt, *feoffauit Wiganum Mareſcallum ſuum de tenementis, quæ de eo tenuit, per ſeruitum mareſcalliæ ſuæ, & rex reddidit ea Radulpho filio Wigani, tanquam mareſcallo ſuo*; what marſhall this was I cannot determine. The ſecond mention of marſhall is in the firſt of king John, and hath alſo a reference to the tyme of king Henry the firſt, in this charter, where king John confirmeth the office of marſhall vnto William Marſhall earle of Penbroke, in theſe words: *Johannes dei gratia, &c. Sciatis, nos conceſſiſſe & preſenti carta noſtra confirmaſſe dilecto, & fideli noſtro Willielmo Mareſchallo comite Penbrook, & hæredibus ſuis magiſtratum mareſcalciæ curiæ noſtræ, quem magiſtratum Gilbertus mareſcallus Henrici regis aui patris noſtri, & Johannes filius ipſius diſrationaverunt coram prædicto rege Henrico in curia ſua contra Robertum de Venoiz, & contra Willielmum de Haſtings, qui ipſum magiſtratum calumniabantur, & hoc judicio quia defecerunt ſe a recto ad diem, quem eis conſtituerat rex Henricus in curia ſua, ſicut carta ipſius regis, quam vidimus teſtatur, &c.* Here is to be noted out of theſe authenticall records, that there were marſhalls in the tyme of king Henry the firſt, anſwerable in tyme to the firſt marſhalls in France: that there were more marſhalls than one, and that William Marſhall earle of Penbrook had onely *magiſtratum mareſchalſiæ curiæ*, that is, marſhall of the king's houſe, which office was ſoe long inueſted in the family, that it gaue them a ſurname, as alſo to other familyes which haue bin marſhalls in great houſes: and laſtly, that it was giuen to William Marſhall, and his heyres, and ſo it was challenged by them, as hæreditary. Neuertheleſs it is certaine, that the next ſucceeding king Henry the third tooke away that office from Richard Marſhall the ſon of the ſayd William: for among the greiuances of which the ſayd Richard complaynes, was, as appeareth in the hiſtory of Thomas Rudborne, that the king, in theſe termes,

ſpoliauit

Spoliauit me officio Mareſcalciæ, quod hæreditario ad me pertinet, & poſſedi, nec aliquo ad illud me reſtituere voluit requiſitus: happily vpon this ground, which Rigordus the French hiſtorian writeth in this age of the marſhalſhip in France. *Hæreditaria Succeſſio in talibus Officijs locum non habet.* And after he was dead, and his brethren, his fiue ſiſters and coheyres, which, as appeareth by the partition, had euery one one thouſand fiue hundred and twenty pounds yearly rent, began to contend about the office of marſhallſhip and the mannour of Hampſteed, marſhall in the county of Berkſhire, belonging to the ſame. But Roger Bygod ſonn of the eldeſt daughter with great difficulty obteyned the ſame: for as Matthew Paris writeth, 1246. *Multiplicatis interceſſionibus conceſſa eſt Mareſcalcia cum officio & honore comiti Rogero Bygod ratione comitiſſæ filiæ comitis magni Willielmi Mareſcalli primogenitæ matris ſuæ.* His nephew Roger Bygod earle of Norfolke was forced to ſurrender to king Edward the Firſt this office with all his inheritance in England, Ireland, and Wales for certaine inſolencys againſt the king. And this Roger, or his vnckle Roger, was he which firſt ſtiled himſelfe [as pride is higheſt, when downefall is neareſt] *mareſcallus Angliæ*, whereas all his predeceſſours uſed noe other ſtiles then the ſimple addition of mareſchallus, as *Gulielmus, Richardus, Gilbertus mareſcallus comes Penbrookiæ.* And noe doubt, but as the greatneſs of William Marſhall the elder, called the great earle, which he had gotten in the minority of king Henry the Third, gaue the firſt greatneſs to this office: ſoe there was a farr greater acceſs thereunto of dignity when king Edward the Second granted to Thomas of Brotherton his halfe brother, a prince of the bloud, the land of Bigod, and ſhortly after the office of marſhallſhip with the rights thereunto belonging and performing the ſeruice accordingly.

After the death of Thomas of Brotherton, we fynd William Mountacute earle of Sarum, Thomas Beauchamp earle of Warwick, Henry lord Percy, John Fitz Alaine lord Maltrevers, Thomas Holland earle of Kent, and then Thomas Mowbray right heyre vnto Brotherton, had the office of the marſhall

marſhall of England, with the name, ſtile, title, ſtate, and honour granted to him in the twentyeth yeare of king Richard the Second, *de aſſenſu parliamenti ſibi, & hæredibus ſuis maſculis de corpore.* Yet neverthelefs the next yeare after he being baniſhed, it was granted to Thomas Holland duke of Surry, as amply as it was to him: and that he might as well beare in the preſence, and abſence of the king, a rod of Gold enamelled at boeth ends, with the king's armes at the vpper end, and his owne in the lower end. Afterward, according to the alteration of tymes, ſometyme the Mowbrayes and the Howards deſcended from them, ſometyme others by interruptions, vpon ſundry occaſions enjoyed the ſame dignity.

What belonged to that office aunciently. I haue reade nothing, but that at the coronation of king Richard the Firſt, William Marſhall earle of Penbroke carryed the royall ſcepter, which had the croſſe in the top: and at the coronation of queene Eleanor, wife to king Henry the Third, the marſhall carryed a rod before the king, made way boeth in church and court, and ordered the feaſt, as Mathew Paris writeth. There is a treatiſe carryed about the office of the earle marſhall in the tyme of king Henry the Second, and another of the tyme of Thomas of Brotherton, where I fynd confuſedly what belonged to them in court and campe; as in court, that at the coronation the marſhal ſhould haue the king's horſe and harneſs, and the queene's palfrey: that he ſhould hold the crowne att the coronation: that he ſhould haue vpon high feaſts, as the high vſher the table clothes, and cloth of eſtate for that day: that he keepe the hall in quiett; that he ſhould bring offenders within the verge before the high ſteward; that he ſhould aſſigne lodgings, and when the king paſſed the ſeas, each man to his ſhip: that he ſhall haue for his liuery three winter robes at Chriſtmas, and three ſummer robes at Whitſuntide: that he ſhould allow but twelue common women to follow the court; in which ſeruice, I ſuppoſe, he had Haymo de Cayton his ſubſtitute, which was called *Mareſcallus Meretricum*, by which ſeruice he held the manour

nour of Cateſhall in the county of Surrey : that he ſhould haue a deputy in the King's Bench : that he ſhould keepe vagabonds from the court : in campe that he ſhould leade the fore-ward : that the conſtable with him ſhould hold courts in the campe : that he ſhould haue certaine ſpeciall forfeytures, as armour and weapons of priſoners, to appoint lodgings, to be abroad till all be lodged, to haue fees of armourers and victuallers of the campe, to haue all the armour, and whole cloth of towns taken by compoſition, to haue ranſome of priſoners eſcaped, if they bee taken againe, with many ſuch like, too long here to be ſpecifyed. And in peace and warr the marſhall ſhould execute the conſtables commandments, in arreſts, and attachments, and that appeareth by the proceſs between Grey and Haſtings. In the ſecond ſtatute of Weſtminſter held 13 E. 1. when many greiuances of the marſhall were complayned of, it was ordeyned in theſe words: *Mareſcallus de comite & Barone integram Baroniam tenente, de vno Palfrido ſit contentus, vel de prætio, qualæ antiquitus percipere conſuevit, ita, quod ſi ad homagium, quod fecit, palfridum, vel prætium in forma prædicta cœperit, ad militiam ſuam nihil capiat ; & ſi forte ad homagium nihil ceperit, ad militiam ſuam capiat. De Abbatibus & Prioribus integram Baroniam tenentibus, cum homagium, aut fidelitatem pro Baronijs ſuis fecerunt, capiat palfridum, vel prætium, vt predictum eſt. Hoc idem de archiepiſcopis & epiſcopis obſervandum eſt. De his autem, qui partem baroniæ tenent, ſiue ſint religioſi, ſiue ſeculares capiat ſecundum portionem partis baroniæ, quam tenent. De religioſis tenentibus in liberam eleemoſynam, & non per baroniam, vel partem, nihil de cætero exigat Mareſcallus.* And about that tyme were ſett downe all the droyts belonging to the earle marſhall in a rolle, which was layd vp in the warderobe ; but that vaniſhed ſhortly after. For, as it appeareth by record in 18 E. 3. the king directed a breife to the barons of the Exchequer of the fees, and all thing elſe belonging to the office of earle marſhall, and they returned in the certificate annexed to the breife, nothing but certaine petty allowances of money, wine, and

candles

candles for the marſhall, and *magiſter mareſcallus*, and for the foure marſhalls for euery day, *qua faciant herbergeriam.* And out of the Red booke of the exchequer they certify in theſe words: *de officio mareſcalciæ ſeruiuit Gilbertus mareſcall comes de Strigul, cujus eſt officium, tumultus ſedare in domo regis, liberationes hoſpitiorum facere, oſtia aulæ regis cuſtodire; accipit autem de quolibet barone facto milite a rege, & quolibet comite eo die, palfredum cum ſella.* And by an inquiſition taken about 11 Henry 5. it appeareth, that there belongeth to the earle marſhall's diſpoſing, the office of the marſhall in the king's-bench, the marſhall of the exchequer, with the office of the cryer before the marſhall, and the marſhalls of the hall of the king's houſe, and ſome other places: but the greateſt intereſs of this office hath bin, ſynce there were noe conſtables; for the kings ſynce that tyme haue referred many matters to them, which in former tymes were proper to the conſtable: neither had the marſhall any precedency in reſpect of his place, vntill king Henry the eighth in the 31ſt yeare of his raigne, by parliament aſſigned him place next to the lord conſtable, and before the lord admirall.

No XIX.

Of the ſame.

By Sir ROBERT COTTON.

THE plenty of this diſcourſe, the laſt queſtion of high conſtables, whereto it held relation, hath preuented; yet what I haue after ſoe many endeavours obſerued, I will in the method of the queſtion deliuer: which fitly induceth with it, an etimology before the antiquity: what learning doeth after properly concerne the office, may be, in the function or perſon, conſidered.

The deriuation. The French writers, the true authours of our transferred office, traduce a compoſition of *mar*, or *mere* with Pauſanias, an old German word for a *horſe*, and frequent to this day in the Netherlands, and *ſcalck*, which with them importeth *ſkillfull*, or *ſchall*, a *ſerjeant*, or *officer*. And in ſuch regard, Guntherus a poett, almoſt in the infancy of that name, doeth Latine that office *ſtabulator*; and with vs the maſter of the king's horſe is not in record vnfrequently called *mareſcallus equorum*. In the laws of Clotharius Magnus, and which may performe a proofe of the name, it is from the former etimology ſoe called, becauſe the charge was, *præeſſe duodecim equis majoribus*. For our owne ſtate, vnleſs we will admitt the ſtory of Normandy, by which Montgomery and Fitz Oſborne were the conquerors *marſhalls d'Angleterre*, we cannot exceed the tymes of Henry 2. and noe earle before king John, vnder whom William earle of Penbroke was by patent marſhall. The honourable addition of earle may proceed from an vnproper tranſlation of *Comes*, which was a moſt common adjunct in the empires period to all theſe offices that the better ſtate called *præfecti*, *legati*, *tribuni*, *præpoſiti*, *primicerij*, or *magiſtri*. Such was the *comes palatij*, or *juſt ſteward*, *comes ſacri patrimonij*, the prince's *aduocate* or *atturny*, *comes ſacrarum largitionum*, *keeper of the priuy purſe*, and *comes ſtabuli*, the *conſtable* or *marſhall*. All theſe were *comites* [as Lancelot noteth] *Quia commearent cum imperatore, vt ſocij in bello, vel in aula.* But after it became a title honourable, many of theſe offices fell to be called *domeſtici & magiſtri* againe: but our marſhalls haue continued that ſtile, being earles before or att the inveſtiture; as to that ſubſequent honour of marſhall of England, I take it to be noe older than the tyme of Richard the ſecond, when in the titular increaſe of the dignity, the reality of that office wayned. And thus much for the name.

Now of the function and perſon. The firſt being conſidered from the antiquity, diuerſity, and right of the creatour.

tour. Antiquity doubtleſs had this office as old as warr had order; ſuch was, by conjecture of name, amongſt the Lacædemonians the ἱππαρχ☉, and *hippagreta*, ſoe called a *colligendis equis*, or by the function rather πολέμαρχ☉, as after the congruency of office may intice beleefe. In Rome's greatneſs the *tribunus militum* vnderwent this duty, as the εἰρηνάρχ☉ did in the Eaſtern empire, and therefore Johannes Lucius in his *placitorum curiæ*, and Alciat tranſlate *tribunos*, *les mareſchaulx*: but it may be, that in all particularityes our marſhall ſuted not to theſe Greeke or Latine offices, being to them rather inſtar then ſimilis: for at the entrance of the French monarchy, the *præfectus palatij* ſupplyed all ſuch roomes, which the third family of the French king's determined, by inſtituting a conſtable, and vnder him two marſhalls, vntil Francis the ſecond, when that number increaſed, ouer military affayres. By what name the Saxons knew this officer I haue noe warrant, but the name and office now in eſſe, we borrowed, as all other faſhions, by the imitation of our French neighbours.

The different dignityes of our marſhall are foure. Thoſe that attend the king, and ſeate embaſſadours in the hall, as the vſhers doe in chambers; next *mareſcallus equorum*, maſter of the horſe; then the earle marſhall; and laſt a knight marſhall, whom the earle *áſſenſu regis* may depute to performe his office at all hands; like to this laſt is in Poland *marſcalcus regni*, *marſcallcus curiæ*. The inſtitution of this high office muſt be alone the king's; the French laws ſay, *mareſcallorum officia ad regem vt domeſtica pertinere*; whereas the king doeth create them by patent, for ſoe was William earle of Penbroke the elder brother, by king John, as the ſecond was by Henry the third in this forme; *Rex omnibus ſalutem: ſciatis quod reddidimus Willielmo Mareſcallo, comiti Penbrook, mareſcalciam ſuam adeo plene, & integre cum omnibus libertatibus ad eandem mareſcalciam pertinentibus, vt frater ejus Willielmus Mareſcallus quondam comes Penbrook eam melius & plenius tenuit.* Of this office, becauſe it is by tenure in grand ſerjeanty, the king may for eſcape of priſoners, or to loſs in regard of their hold, make a

ſeyzure. Soe tooke Edward the firſt from Hugh Bigod the rod and office, deliuering it to the cuſtody of the ſheriff of Kent.

For the office, I am induced by obſeruation, to beleaue, that it was in peace the ſubordinate miniſter to the ſteward for execution, as the ſheriffe is to the judge, and in warr the ſubſtitute, ſometimes the vicegerent of the conſtable; and doubtleſs, howſoeuer now, it had *imperium* onely, and not *juriſdictionem*: for all magiſtracy was formerly diſtinguiſhed as itt had in it *merum imperium mixtum*, or *juriſdictionem*, the laſt implying *juris dicendi poteſtatem*, peculiar to the judges, and is ſometymes called *examen*, *diſquiſitio*, *cognitio*; but when *præfectura*, it doeth intend *mixtum imperium* in the ſame perſon, hauing both *juriſdictionem*, and *ſententiæ executionem*; this had in *privatis* the *præfectus prætorius*, the neareſt of the Roman officers in function and creation to our conſtable: but *merum imperium* hath bare execution, and *gladii poteſtatem*. Such were of old *tribunus militum*, *legati tribunorum*, now marſhalls, and *præpoſiti mareſcallorum*, knight marſhalls, the office being *reos perquirere & cuſtodire*, and execute the judges ſentence, hauing onely *imperium nudum ſine juriſdictione*; for it might be much injuſtice to inveſt *juriſdictionem* in the marſhall, ſynce the inheritance may caſt a diſability by infancy, ſex, and naturall defects. And therefore may many reaſons be inferred from practice of former tymes, that they did ſoe repute it; for Fleta ſayth, that not onely *mareſcallus* is *ſuo periculo omnes captos infra virgatam cuſtodire*, but *de eis coram ſeneſchallo reſpondere, & de judicatis plenam facere executionem*: and the ſteward did of courſe command the clerke that keepeth *placita aulæ pro rege*, to direct his writt *mareſcallo quod ipſum de quo fit queſtio, & clamor ſine dilatione faciat attachiari*, ſoe that he bee *infra metas hoſpitij*; hereby taking him but as the ſheriffe, hauing onely *imperium*, and if any be committed for debt by the ſteward, it muſt bee to the marſhall, who may not bayle for aboue forty days *ſine juris injuria*.

Another

Another conjecture is, that although he ſitteth in the court with the conſtable, yet the cognizance of the plea [a marke of juriſdiction] is not before him, but before the conſtable, who is judge.

A third reaſon is that he is not ſworne, but as the *tribunus militum* without oath admitted, and therefore ought not to haue juriſdiction, as had judges who were vnder oath authorized, as may appeare by many places in the Roman ſtory. But of late, cuſtome and ſtatute law, in want of *feneſchallus hoſpitij* and *conſtable*, have diuerted all their juriſdiction on the marſhall, for he hath now plea of treſpaſs within the verge, and of contracts between partyes in the king's houſe; but by inqueſt of the country next adjoyning, boeth partyes not being of the houſehold: and attachements ſhall be made in actions before him.

Now for his dutyes in court; of old it was either for execution of juſtice, or ſtate ſeruice: for, as afore declared, he was as ſheriffe to the ſteward who repreſenteth [as Fleta ſayth] the king's perſon within the verge, hearing and determining pleas of the crowne, and in common cauſes *vicem gerens capitalis juſtitiarij*, whereas the marſhall wayteth the ſteward's command, returneth the attachments in court to his cenſure, and taketh execution of his judgements.

The marſhall's authority executory extendeth twelue miles in circuit of the court, and is called *balliva*, and from his rod, the verge which Fleta nameth *virga pacis*, he hath correcting power ouer euill perſons [ſuch haue the marſhalls of Poland] and of diſſolute women, that frequent the court, taking of them for the firſt offence foure-pence; the ſecond impriſoning, and before the ſteward abjuring them the court; the third poling of their hayre; and the laſt cutting off the vpper lipp, in this ſharing part of the irenarcha's duty, who did puniſh *per laſciuiam aliquid agentes, & mulierum ſtupratores*.

Other ſeruice he hath in court, as *hoſpitia liberare camerario regis pro rege*, and to entertaine ſtrangers for the king's honour: hee may aſſeſſe victualls and other neceſſaryes

ryes for the court. In ordering of ſtate they are principall officers; the Poliſh ſtatutes calling them *omnium ceremoniarum magiſtros.* At the coronation he attendeth on horſebacke with his tipſtaffe, as the conſtable doeth with his mace, the king to Weſtminſter. In Germany he is the emperour's ſword-bearer; but that with vs and France is the conſtable: he hath with vs power of deciſion in cauſes of armes and honour, and is in triumphs a cheiſe officer; he with the conſtable hath direction ouer the officers *Accipitrariorum & falconariorum.* And thus farr *de togato officio.*

In warr, he hath the firſt place next the conſtable, being as *tribunus* was to *magiſter equitum*, and muſt be *in prima acie, & loca deliberare toti exercitui*, and hath regard of the watch; in this it ſuteth with the *tribunus*, whoſe ducty was *caſtris locum illigere*, being therefore called *magiſter caſtrorum*, whom the Germans name the *feild mareſcalk*, and the French *mareſchaux de champ*, employing their prouoſt marſhall to puniſh their *transfugas & prædones.* By a decree of Charles the ſixth their charge is ouer the armour and inſtruments of warr, therein againe imitating the polemarchi in Greece. They haue, as had the tribunes, *curam commeatuum caſtrenſium eiſque pretium ſtatuunt*; to determine the ſuites in campe, the conſtable and marſhall hold a court: and a decree in France anno 1356, giueth *cognitionem conſtabulo & mareſcallis, perſonalium actionum inter eos, qui capti in bello fuerint.* By Geruaſius Tilburienſis the marſhall and conſtable doe take accompt of all the ſtipendary ſouldiers, giuing them allowance or diſcharge. They make certificates whether the knights haue ſerued according to tenure their full terme.

The ſouldiers may not take ſpoyle vntill the marſhall haue cryed *hauock.*

In combats he prepareth the liſts, and avoydeth the rout from that circuite, ſearching the combatants, and giuing them their oathes; and with the conſtable ſitteth there as judge.

The

The laſt part, which is his compenſation for ſeruice, is either dignity or fee; by the firſt he is [as Alciat ſayth] *illuſtris*, and was allowed 9 Richard 2. to carry *virgam auream*; hath a place in the higheſt bench in the exchequer next the conſtable, and doeth precede the admirall by ſtatute 31 Henry 8. His fees are either in court or in feild: in the firſt hee hath for barons, their palfrey or the price; the ſtrayes and felons goods within the verge are his duty, for noe priuate freindſhip can reſtrayne his office deriued from the king's prerogatiue, and ſuch power doeth 32 Henry 8. warrant; his knight, clerke, and ſerjeant haue diett in the king's hall; for arreſt by *capias*, or *manupriſe* he hath eight-pence by ſtatute 2 Henry 4.

In the camp he hath all the amercements of the king's houſe, as the conſtable the fines; to him belongeth the goods that are taken, as the armour to the conſtable: and in combats he hath the liſts; and the armes of the vanquiſhed are the conſtables. And thus much for the marſhall's office.

N° XX.

Of the ſame.

By Mr. AGARD.

12° Februarii 1602.

BEFORE the conqueſt I fynd not that name of Marſhall with vs in England, although the exerciſe of the like office and actions were continually practiced through the realme long before, namely according to the definition of the name, being deriued from *Mars*, the god of warr, and ſoe by the French called *mareſchaulx* from *mars* and *haut*: whereof France euer ſynce they were freed from the gouernment of the empire of Rome, haue appointed for the better

better quiett of that realme, foure eſpecially, who are to command all martiall men in tyme of inuaſion, or in tyme of mutiny, to be at their direction, and leuyed for reſiſtance, or for peaceable reſtoring of the quiett of the countrey.

The like before the conqueſt was uſed here in England, as may appeare by ſundry auncient legier bookes, and ſtoryes of our realme, whereof I cite ſome, as followeth.

Knighton a monke of Leyceſter, who collected a chronicle of our realme, reporteth this of Leofryk Spott, the founder boeth of Coventrey and Burton, and diuers other abbeys. *Laudabilis comes Leofricus filius Leofwini ducis Merciorum in villa ſua de Bromleygh obijt; cujus cum vixit, circumſpectio multum profuit terræ Anglorum.* This man, as appeareth by Hollingſhead's report, had the gouernment of all that part of the realme, which was called Mercia, where, vnder the king, he exerciſed all manner of princely juriſdiction; for ſoe it appeareth by king Henry the firſt his laws in the ſeventh chapter, *ſicut antiqua fuerat inſtitutione formatum, &c. generalia comitatuum placita certis locis, & vicibus, & diſinito tempore per ſingulas prouincias Angliæ conuenire debere, nec vllis vltra fatigationibus agitari, &c. interſint autem epiſcopi, comites, vicedomini, vicarij, centenarij, aldermanni, prefecti, præpoſiti, barones, vauaſores, tungreuij, & cæteri terrarum domini, &c.* but eſpecially *comites, quaſi comites in gubernatione,* which were ſometyme named *duces,* who had power to leauy as we term it *poſſe comitatus* upon any ſeruice offenſiue or defenſiue for the good of the land; for ſoe I reade in the ſtory of Elye, that when the Danes entered the land in king Edgar's tyme, *Brithnothus vir nobiliſſimus Northinhumbrorum dux fortiſſimus fuit, qui ob mirabilem ſapientiam, & corporis fortitudinem, qua ſe ſuoſque viriliter protegebat, Anglica lingua alderman, id eſt ſenior vel dux, ab omnibus cognominabantur; hic dux exercitûs contra Danos eos profligauit, & reliquos ad mare compulit apud Maldinam. Set Dani proximo anno reuerſi ipſum cum exercitu ſuo interimerunt, ſub conductu Cuthmundi fil. Sueuan.* And the ſame authour

authour ſheweth him to haue bin a man of great poſſeſſions, for he gaue them aboue tenn mannours, which he calleth *Magna maneria*, as Trumpeton, Spaldwich, Ondhill, and many more in Northamptonſhire, whoſe daughter and heyre was married to duke Oſwy; and ſoe it ſeemeth that theſe great dukes or counts bare euen the like ſway for the peaceable gouernment of the prouinces, as the *mareſchaux* of France haue and doe in France: and I find alſo, that a fine was leauyed before Alwyn alderman.

But leauing them I will come to the firſt name I find in England. William the conqueror after he had ſettled the ſtate of this realme in quiett after the battle of Haſtings, as the hiſtory of Normandy ſetteth it in theſe words: *le roy Guillam le Baſtart fit Hue de Mortimer ſon conſtable d'Angleterre, le quell Hue eſtoit ſon parent de per ſon pe. Et le conte Roger du Montgomery, et le preux Guillam le Fitz-Oſberne ces deux ill fit mareſchaulx d'Angleterre.* Count Mongomery he appointed to be earle of Shrewſbury, to whom he gaue Shropſhire and Montgomeryſhire, to the end he ſhould defend the ſame againſt the Welchmen: to Fitz Oſberne he gaue the earledome of Hereford, that he might doe the like in thoſe parts: ſoe as they being both valorous men, might by their ſkill in martiall affayres keepe thoſe parts of the realme in quiett.

But leauing their creation, I will come to touch their offices, by which it will appeare, that they were high officers appointed for martiall matters for the puniſhment of offenders, and for attendance about the prince boeth in peace and warr.

It appeareth by that booke intitled *de neceſſarijs ſcaccharij obſervantijs*, which ſome call in the exchequer the Red booke, and in the treaſury the Black booke, and commonly called *Tilberienſis*; that his place in the exchequer is appointed after theſe cheife officers: firſt ſett *capitalis juſtitia*, whom a writer in king Henry 7th's tyme by his booke [which is in the queenes library of Richmond, whereof I haue a copy] calleth lord high ſteward of England; then *cancellarius*; then *conſtabularius*; then *duo camerarij*; then *mareſcallus*. And theſe be all that ſitt vpon

the firſt and cheife bench of judgement, before whom I haue found ſundry fines leauyed of mens lands, euen by thoſe names, all ſauing *juſtitia*; but to come to his office, I find that the *mareſchaux* of England were, and are diuers att this tyme. There are *mareſchaulx* in the court of the exchequer, in the king's bench, in the warrs, and ſome that hold their land *jure eſſendi mareſcallum in die coronationis, & eſſendi mareſchallum ad meretrices*; of which I will ſpeake particularly.

In court he is with the aduice and direction of the lord ſteward, to ſett orders for the quiett, ſeruice, and ſurety of the prince, and cleane keeping of the court; as I remember, I ſaw in a booke ſhewed mee by a worthy perſon ſundry things, which by the marſhall were proclaymed in Richard 2. tyme, among which was one, that noe inferiour officer ſhould haue his wife follow the court with him. Item, To arreſt all malefactours or ſuſpected perſons, and them to impriſon: and for that purpoſe I fynd in Henry 4. tyme there was a ſtatute made, directing what pleadings ſhould be held before the mareſchall in his court, where a writt is directed to remoue a record out of that court into the king's-bench by theſe words; *dominus rex mandauit ſeneſchallo, & mareſchallo hoſpitij ſui ſecundum breue ſuum, quod ſub ſigillo veſtro*, &c. ſoe as he hath a ſeale of the court of pleas held before him. All proclamations about the court are made by him or his mareſchall, called knight mareſchall. I doe not fynd that the mareſchall is accomptable for any fines, amerciaments, or forfeytures of goods leavyed by him by virtue of his office, but ſuppoſe that the ſame belong to him of right; for in forfeytures vpon felony, murder, &c. I fynd *vnde vicecomes reſpondeat*; but neuer *vnde mareſchallus reſpondeat*. Thus much for court.

Knight mareſchall the earle's deputy.

In the exchequer *Tilberienſis* ſaith, that he is to joyne with the conſtable, for the taking of accounts for warr matters, and ſtipends of ſouldiers, to giue the oath to the accomptant; *fidem ab ipſo ſuſcipiat in publico, quod legitimum compotum ſecundum conſcientiam ſuam fecerit*: to take all the tallyes of ſheriffes and put them in a bag, to the

end

end that they may be entered in the great rolle; and to keepe in ward all manner of accomptants that be found in arrearages vntill they haue payd; and to deliuer writts of ſummons of record, to be conueyed to euery county, and places appoynted, as appeareth by the eighth and ninth chapters of the booke.

In the king's-bench he entereth in by the king's graunt, by theſe words; *ſciatis, quod dedimus & conceſſimus Willielmo de Fynborow officium mareſchalli in banco noſtro ad faciendum, & exequendum omnia, & ſingula, quæ ad dictum officium pertinent*, &c. ſoe as what belongeth to him, appeareth not, but is well knowne att this day and practiſed in the king's-bench; for warrs he is next to the high ſteward and conſtable, the cheife officer hauing charge of all things by his direction, that may tende either to the benefit or ſuerty of the army; where he keepeth a martiall court of pleading, as I haue ſeene in theſe words: *placita exercitus regis apud werke die mercurij proximo poſt dominicam in ramis palmarum, anno regni R. E. 24to*, which court was kept in the preſence of the ſteward, conſtable, and mareſchall, as I gather by the pleading: before whom were pleaded treſpaſſes and hurts done by one ſouldier to another. Item, it appeareth, that it was not lawful for any ſouldier to arreſt one another, but by the mareſchall, elſe puniſhable. Item, he puniſhed all victuallers that ſold regrated, or foreſtalled victualls. Item, he puniſhed all thoſe that fayled in watching and warding. Item, he made proclamations in the king's name, that none ſhould breake array, or march before the king's ſtandard, or other ſtandards, but by the direction of the conſtable and mareſchall, and inflicted by the ſaid proclamation, puniſhment or death: inſoemuch that the mareſchall impleaded one Alelmus de Whelton, for that he thruſt out before the ſtandard of the conſtable and mareſchall, contrary to the proclamation made, and attatched him by two horſes, the which the ſayd Alelmus reſcued: and by verdict in the ſame court it was found, that he had tranſgreſſed contrary to the proclamation, whereupon itt was alleadged that the ſayd Alelmus body ſhould

be committed to priſon, there to be att the king's pleaſure, *quouſque*, &c. and that the mareſchall ſhould receaue the two horſes by him attached, and by the ſayd Aielmus reſcued, as forfeyted to the ſayd mareſchall; and many things more there are, inſoemuch as he had power to forgiue treſpaſſes; *quia poſuit ſe ſuper miſerecordiam mareſchalli*: But I will not be tedious, I haue brought ſuch collections as I haue out of the ſayd pleadings, which who that liſt may reade.

Placita exercitus R. No. 24. E. Rotto. 3.

For tenure of Lands, &c. I omitt.

N° XXI.

Of the ſame,

By Mr. Davis.

I Doe not hold this office in England to be more auncient then the conqueſt; for boeth the office, and the name were brought in by the French, though the French perhaps borrowed the name boeth of mareſchall and ſeneſchall from the Germans, becauſe I cannot fynd how I may deriue it, either name or word, of the Latine tongue, from which, when it firſt began to degenerate, boeth the French, Italian, and Spaniſh were deriued.

That the office is French, it will appeare plainely, if we compare the mareſchalls of France, and their power with the office of the earle mareſchall of England.

The French haue a double exerciſe of their office; *puiſſance de glaiue*, as Bodine calls it, and *puiſſance de verge*; ſoe haue ours.

The conſtable of France doeth by his office leade the king's army, and in his abſence the mareſchalls; ſoe is it in England.

The mareſchalls in France are ſubordinate, and in the degree of miniſters vnto the conſtable boeth in warr and peace; ſoe it is with vs.

The

The office of the mareſchalls of France was euer perſonall, and for terme of life, and ſoe it was adjudged, as Bodine writes, by an arret anno 1361, and that it could not be hereditary, becauſe it is part of the demaine of the crowne of France; ſoe was it with vs many yeares after the conqueſt: and albeit Margarett counteſſe of Norfolk at the coronation of king Richard the ſecond made clayme to the office, as daughter and heyre of Thomas Brotherton; yet it was held then to remayne in the king, and the lord Henry Percy was then receaued to exerciſe the office for that tyme: and afterwards the lord Thomas Mowbray earle of Nottingham, who as I take it marryed that lady, had a graunt of that office for his life onely, and after, 9 Richard 2. had another graunt to him and to the heyres males of his body begotten, and ſoe the office began to be hereditary in that family, which continued vntill the daughter and heyre of Mowbray was marryed to Howard in Edward 4th's tyme, and after to the family of the Howard's, till the attaynder of the laſt duke of Norfolke; ſynce when, the office hath bin twice graunted, but onely for life; firſt to the earle of Shrewſbury, and after to the earle of Eſſex. Notwithſtanding as well when the office was annexed to a perſon certaine, being graunted but for life, as when it was hereditary, the earle mareſchall had always power to aſſign the office to a knight for life, whoſe miſdemeanour did not forfeite the office of earle, as appeareth by the booke, caſe of 39 Henry 6. Sir John Brandon, Sir Thomas Bourchier.

For the exerciſe of this office it is of two kinds here in England, in warre and in peace; in warre he leades the king's vantguard, and doeth quarter and lodge the army; he keepes a rolle of the names of all the king's ſouldiers, and therefore when eſcuage is demanded after a voyage royall, if the tenant alleadge that he went with the king to Scotland, it ſhall be tryed by the certificate of the earle mareſchall; ſoe vpon an *eſſoine de ſeruitio regis*, vpon the mareſchall's certificate the eſſoine was warranted.

The

The mareſchall was neuer commanded to watch, but his office was euer to relieue the watch; and if any hunting games were made while the army lay in the feild, the conſtable and mareſchall did gouern it, and the conſtable was to haue all the horned beaſts, and the mareſchall all the ſpotted beaſts; and if any priſoner did eſcape from his owner, and were taken by the watch, the mareſchall was to haue him as a ſtray; beſides the mareſchall was to haue of euery victualler, armourer, taylour, barber, &c. four-pence *per diem, & de cheſcun femme de folie* four-pence *per diem*; and in the courſe of warr the conſtable and the mareſchall were euer the judges.

In the tyme of peace the marſhall alſo is a principal officer, for to that end the rodd or verge is giuen vnto him att his creation, and is called *virga pacis*; for by his office he is a conſeruator of the peace throughout the kingdome, as well without the verge as within: and therefore in the booke of the peace, my lord of Eſſex, when he was mareſchall, was named in euery court, as well as the chancellour and treaſurer. But he had ſpeciall juriſdiction within the verge, which is twelue miles round about the tonnel of the king; for ſoe it is called in the ſtatute of 13 Richard 2,

Ne de cætero concupiſcatur ad libidinem, he is to cleare the king's houſe of all diſorderly and lewd perſons; he is to baniſh all leud women vpon ſeueral paynes, and after the fourth warning to cutt off their vpper lipp.

He was wont to ſitt as a principall judge boeth in the king's-bench and in the exchequer; for theſe courts did euer follow the king's houſehold, and ſoe were euer within the verge, and all priſoners committed by thoſe courts were committed to the mareſchall, and therefore by his office he euer had an vnder-mareſchall in boeth thoſe courts, which juriſdiction doeth continue to this day; his lodging was alwayes appointed in the houſe where the king's exchequer was holden, when it was not fixt, but followed the court.

Beſides

Beſides, the conſtable and mareſchall had a peculiar juriſdiction to decide matters of appeale of treaſon, by combate, according to the ciuill law, as 37 Henry 6. is, where if one kill the other, he may juſtify vpon a certificate of the mareſchall.

Beſides, the mareſchall had another court, a clarke and a ſerjeant, for ciuill contracts ariſing within the verge, which is called the court of the marſhallſey, when one party is of the king's houſehold.

Beſides, he is a principall officer at the coronation, and all creations of ſtates. At the coronation he hath the king's and queene's horſes, and noe layman may touch the crowne but hee: at creation of any duke, earle, baron, biſhop, abbott, priour, and barony, their horſes, and of euery knight a demy marke.

The office is grand ſerjeanty as appeareth in Littleton.

23 Henry 6. precedency giuen to him aboue all earles and dukes, next the duke of Exeter, and noe duke to take place except the king's ſonne.

N° XXII.

Of the ſame.

By Mr. HOLLAND.

THE high conſtable and mareſchall are judges of matters of armes and combates: and at the combate appoynted to be fought between Henry of Bolingbroke, and Mowbray duke of Norfolke, the earle mareſchall meaſured their ſpeares to be boeth of equall length, and then deliuered the one ſpeare himſelfe to the duke of Hereford, and ſent the other vnto the duke of Norfolke by a knight.

Humfrey de Bohun earle of Hereford, and mareſchall of England in the tyme of king Edward the firſt, was required by the king in the parliament att Saliſbury, to paſs ouer into Gaſcoyne with an army; whereunto he replyed, that if the king would goe in perſon he would willingly goe,

goe, and march before him in the foreward of the battell, as by right he was bound to doe; whereunto the king replyed, that he ſhould goe with others though that he himſelfe went not; whereunto the earle replyed, that he was not bound ſoe to doe; whereunto the king being angry ſayd, By God, Sir earle, thou ſhalt goe or hange. And I ſwear, ſayd the earle, the ſame oath, that I will neither goe nor hange, and ſoe departed from the king without leaue taken.

The widdow of Thomas of Brotherton did write herſelfe counteſs mareſchall of England, as by her charters which I haue here doeth appeare; yet ſhe was but tenant in dower for terme of her life, and olde *Natura Breuium* fol. 5. is expreſly againſt it, becauſe ſhe may not be endowed of an office, which ſhe may not exerciſe herſelfe.

The firſt earle mareſchall that did beare the golden ſtaffe was Thomas Holand duke of Surrey, nephew vnto king Richard the ſecond, as appeareth by the charter in the Tower.

Thomas de Holand dux Surrey, nepos regis habuit officium mareſchalli Angliæ, ac etiam rex conceſſit quod idem dux ratione officii ſui habeat, gerat, & deferat quendam baculum aureum circa vtrumque finem de nigro amilatum, non obſtante quod aliquis alius ante hæc tempora baculum ligneum portare conſueuerit 3 p. 21. Richard 2.

In the tyme of king Edward the third, John of Gaunt tooke the mareſchall's rod from Mortimer earle of March, and gaue it vnto Sir Henry Percy, and made a motion in the parliament that there might be no more mayors in London, but that the mareſchall of England, as well within the citty as without, might arreſt ſuch as had offended; but the Londoners armed themſelves and fought for the duke of Lancaſter, who that day dined att the houſe of one John of Ipre, and when word was brought vnto him, that the Londoners being armed did ſeeke for him, he leapt ſoe haſtily from his oyſters, that he hurt boeth his leggs againſt the forme; and wine was offered to his oyſters, but he would not drink for haſte.

Nº XXIII.

Of the ſame.

By Mr. THINNE.

I KNOW that in this learned aſſembly, there can nothing be ouerpaſſed, what ciuill or common law, or hiſtoricall, or record matter may afford, but that will be deliuered by ſome one, and therefore I might be ſilent: but ſynce by order I muſt ſay ſomething, although for *aliquid, nihil eſt*, I will firſt ſpeake of the verge, and then of ſome other few Tower records, which ſomewhat touch the mareſchall, omitting infinite things whereunto our queſtion will ſtretch, if tyme ſerue to deliuer them.

The mareſchall of England hath vnder him mediately or immediately all mareſchalls, and officers of martiall matters, as well in warre as peace; ſoe that ſome hold, that, out of queſtion, the mareſchall of the queene's houſe is but a member of the marſhallcy of England, and hath his authority onely within the verge of the king's houſe; and for that cauſe it ſeemeth to mee, that the Saxons hauing their verge, had alſo this officer; for they be correlatiues; although ſome conſtantly affirme the Saxon kings had neither marſhall nor vierge, boeth which they ſay came in with the Conquerour, which I thinke true, if they reſpect the names onely: but if they conſider the nature of the word *vierge* or *virga* amongſt the Latines, and the French, they ſhall fynd it was none other in effect, then Cnyp amongſt the Saxons, boeth ſignifying peace; for this word virge, vierge, rod, or ſtaffe, as we call it at this day, the *tipſtaffe*, did in all ages, and yett doeth amongſt all nations, and a mongſt all officers, ſignify correction and peace; for by correction follows peace, wherefore the vierge or rod was the enſigne of him which had authority to reforme euill in warre and in peace, and to ſee quiett and order obſerued amongſt the people; for therefore beareth the king his ſcepter. The church hath her paſtorall ſtaffe; and other magiſtrates, which haue

the adminiſtration of juſtice or correction, as haue the judges of the law, and the great officers of the prince's houſe, have alſo a vierge or ſtaffe aſſigned vnto them, which vierge learned men doe make ſix fold; that is, *Virga diſciplinæ*, whereby the inſolency of wicked men are bridled; *Virga poteſtatis*, by which he doeth juſtly gouerne; *Virga cognitionis & ſcientiæ*, by which he doeth inſtruct and teach the ignorant; *Virga cuſtodiæ*, by which juſtice, liberalitie, peace, and the laws be obſerued and defended; *Virga miſerationis*, by which the weake, and ſuch as ſuffer injuries are relieued; and *virga debellationis*, by which victoryes are obtayned; all which are repreſented in the golden vierge or rodd, which the marſhall beareth: of which vierge or rodd miniſtering correction in the queene's houſe, and in a certain circuit about the ſame, that precinct is called the vierge or peace of the queen's houſe ſubject to the juriſdiction of the Mareſchall. Which precincte, although it be now greatly enlarged ſynce the conqueſt att ſeuerall tymes, to the compaſs of about twelue miles about the Court, yet before the conqueſt the vierge or Fryp being the king's peace, or the peace of the king's houſe, did in the tyme of king Athelſtan, who began his reigne in the yeare of Chriſt 930. not extend fully to foure miles euery way; for thus ſayth Textus Roffenſis, a booke written about the tyme of king H. 1. in the Saxon laws of that king. Dur ſeor ſeal beep pær Cynger ȝryp ſram hir Burȝeat pæp heir ſitanð on ſeopep healf hir ſatir iii. Mila 7, .iii. furlanȝa7. iii. acna bræð, 7. 9. ſota 7. 9. Scðftamanða 7. 9. beepe corna. Which is, thus far ſhall be the king's peace from his houſe, where he remayneth on his foure halfe, that is three miles, and three furlongs, and three acres broad, and nine foote, and nine ſhaftements, and nine barley cornes. By theſe words, on his foure halfe, is meant on the king's behalfe euery way Eaſt, North, Weſt, and South from the king's houſe. Thus much for the vierges antiquity.

The records be theſe:

That Roger Bigod earle mareſchall ſurrendered his office to his nephew Roger Bigod, whom the king accepted as earle

earle mareſchall, whereof the record is : Memorandum *quod in craſtino inventionis ſanctæ crucis anno regis Henrici filij Johannis* 54. *Venit Rogerus Le Bigod filius Hugonis Le Bigod, nepos Rogeri Le Bigod com. Norff. & mareſchalli Angliæ cum literis ejuſdem Rogeri pendentibus huic rotulo, per quas idem comes rogauit Dominum regem, vt ad officium mareſchalciæ nomine prædicti Rogeri comitis faciend. dilectum nepotem ſuum dominum Rogerum Le Bigott prædictum, ſuum facit attornatum, quem idem comes ad dictum officium exequendum, nec non illum, quem in hoc loco poſuerit, admitteret, ſicut in literis prædictis plenius continetur. Et dominus rex habito ſup. hoc tractatu cum domino Edovardo filio ſuo, ipſum admiſit ad officium mareſchalciæ nomine prædicti comitis faciend.*

Henry the Third had continually ſeauen mareſchalls attending vpon him in his court, each receauing yearely twenty marks pay, anno 53 H. 3.

A certificate out of the Exchequer for fees and allowances aunciently belonging vnto the earle mareſchall, and to his vnder miniſter of the king's houſe 11 Edw. 2. which proueth the mareſchall of the king's houſe, but vnder miniſter to the earle mareſchall, as I for this tyme conceiue it.

The king ſeyzeth the office of the mareſchall into his hands for the eſcape of a priſoner out of the Marſhalſey, whereof this is the record : *Willielmus Weldour mareſchallus coram domino rege per comitem mareſchallum, conſtituitus in preſentia domini regis die martis in feſto apoſtolorum Simonis & Judæ hoc anno arreynatus fuit, & allocatus. Vbi Johannes at Berptie, qui pro morte trium hominum de com. Deuoniæ per ipſum Johannem felonice interfectorum, &c. pro facto, &c. attachiatus fuit, & priſonæ Mareſchalciæ in cuſtodia ſua occationibus prædictis mancipatus extitit, cognouit, quod ipſe non habet ipſum Johannem in cuſtodia ſua ad præſens, nec ipſum habere poteſt, per quod dominus rex ſaiſiri fecit virgam in manum ſuam, & illam Rogero at Water ſeruienti ſuo commiſſit ad officium mareſchalciæ cuſtodiendum, & ſacramentum ab eo ad fidelitatem deſeruiend. in officio prædicto*

coram juſticiarijs ſuis facere præcepit, & dictum Willielmum gaolæ commiſſit, voluntatem ipſius domini regis commorand. &c. Liber Rubeus parliamentorum in Turri London iremanent. Within three yeares after which alſo the ſame king Edw. the 2. in the ſixth yeare of his reigne, as hath the record, reſtored the office of the lord mareſchall, which before he had lately ſeyzed into his hands for want of attendance.

The office of conſtable being voyd, certaine perſons are by commiſſion appointed to ſitt judicially with the lord mareſchall for the hearing and proceeding *ſecundum legem, & conſuetudinem armorum ſuper cujuſdam priſionarij,* 44 *Edw.* 3. By which it appeareth that the marſhall's court is a court military, to determine matters military according to the law of armes.

Laſtly, I fynd many deedes of Sir Oliuer Maleuerer, who writeth himſelfe therein mareſchall of England, when, as appeareth by the booke and muniment of the earle of Kent, he was but then deputy to Ralph Neuill earle of Weſtmerland, and mareſchall to heare the cauſe in controuerſy between Reynold Grey of Ruthen and Edward Haſtings, for bearing the armes of Valence and Haſtings of Penbroke. In which booke it further appeareth, that the mareſchall of England is deputy, or vnder officer of the conſtable; for John duke of Bedford conſtable of England did direct his precept to Ralphe Neuill earle of Weſtmerland, to ſummon Sir Edward Haſtings to anſwer Reynold Grey of Ruthen in the mareſchall's court, &c. wherewith I will now end, although I could deliuer vnto you what fees belonged to the mareſchall in peace, and in the warrs, as all the ſpotted beaſts and ſuch like, and that in ſome part of his office our mareſchall is the ſame officer, and hath the ſame juriſdiction in England, that *rex ribaldorum*, as Tillet termeth him, or king of harlots, as Chaucer in the romance of the Roſe entitutled him, hath in the court of France.

N° XXIV.

Of the ſame.

By ANONYMOUS.

12° Febr. 1602.

I. *OF the name and antiquity of earl Marſhall.*
II. *Of the diuerſity of graunts, commiſſions, and patents of the office.*
III. *Of the honour, authority, fees, and allowances belonging or enjoyed with the Office.*

Touching the name I will ſay little, leauing it to others, who I know come better prouided, onely it ſeemeth by generall conſent to be deriued of *mars, martis,* and to take the name as an officer of warre, whereof Matthew Paris ſpeaking of William Marſhall earle of Penbroke ſayth: *Memoratus itaque Willielmus, vtpote bellicoſus, & ſtrenuus mareſchallus, quaſi martis ſeneſchallus.* To this may allude the laſt ſtrayne of the two verſes made for the ſayd William his epitaph, as is remembred in two ſeuerall places of the ſame booke, which verſes one Jeruaſius de Melkelia, as it were taking vpon him the perſon of the ſame William, is ſayd to haue made, and ſoe may ſeeme to be more pertinent to his perſon then to this, and are, I thinke, common to moſt men, viz.

Sum, quem Saturnum ſibi ſenſit Hibernia, Solem
Anglia, Mercurium Normannia, Gallia Martem.

For the antiquity thereof, the auncienteſt mareſchall of England, that I fynd, is William Fitz Oſburne marſhall to William the Conquerour, made by him earle of Hereforde and lord of the Iſle of Wight, whoſe daughter and heyre was marryed to Riuers earle of Exeter, as appeareth by the booke of Barons ſynce the conqueſt, collected and written in this queene's tyme, and made by [as it is ſayd] Robert Cooke Clarencieux.

Touching the diuerſity of commiſſions, graunts, and patents of the ſaid Office.

Some during pleaſure in this forme.

As that 3 Sept. 1 E. 2. to *Robert de Clifford de officio mareſchalciæ Angliæ habendum & cuſtodiend. cum omnibus, &c. quamdiu regi placuerit*, with a mandate to the treaſurer and barons of the Exchequer, *quod ipſum quem prædictus Robertus poſuerit loco ſuo ad faciend. ea quæ ad officium illud pertinent, in eodem ſervitio in loco ipſius Roberti recipiant.*

The like the ſame yeare to Nicholas de Segraue, and diuers others att other tymes hereafter mentioned.

Another of king Richard the 2, anno 3. to Thomas Holand in another forme, viz. in theſe words: *Conſtituimus Tho. Holand fratrem noſtrum mareſchallnm noſtrum Angliæ, capiend. in eodem officio feoda ad dictu. offic. &c.* with this further clauſe: *Volentes quod ipſe officium illud, & quicquid ad illud pertinet per ſe, & ſuos deputat. idoneos debite gubernare, & exercere poſſit quamdiu in officio ſteterit ſupradicto.*

Sometyme it ſeemeth ſome haue bin admitted to that office for ſome eſpeciall tyme, as for a coronation, for a tyme of combate, or other like honourable ſolemnityes; as namely, 20 R. 2. the ſame Thomas Holand then duke of Surrey ſupplyed the ſame office, vpon the occaſion of the accuſations and appeale between the duke of Hereford and Thomas Mowbray duke of Norfolk then earle mareſchall, by patent of inheritance, as hereafter enſueth, which, as other great offices, haue bin beſtowed for the ſpace of a day; as at the combate then appointed, it is ſayd the duke of Aumarle was for that day conſtable of England; and whether theſe were by graunt I haue not ſeene: but it ſeemeth the mareſchall might haue his office, by deliuering him the rod, a ceremony in other offices to inueſt them therein, as by deliuering white ſtaues to the principall officers of the king's houſehold. And as Mathew Paris writeth in king H. 3. tyme of Gilbert, one of the ſonns of William Marſhall earle of Penbroke, viz. *Gilbertus mareſcallus frater, & hæres Ricardi comitis mareſchall.*

Holling-ſhead, 493.

reſchall. venit ad regem proteſtans mortem fratris ſui, & poſtulauit ab eo, vt ipſum in hæreditat. ſuam reciperet, offerens homagium ſuum regi, & quicquid ei, vt domino facere tenebatur. Tunc rex interceſſione & conſilio archiepiſcopi reddidit ei hæreditat. ſuam totam, tam in Anglia, quam in Hibernia, & homagium ejus recepit, atque poſt hæc in die Pentecoſtes apud Vigorniam eundem Gilbertum cingulo cinxit militari, tradens ei virgam mareſchalciæ curiæ ſuæ, ſicut moris eſt, & ſicut eam anteceſſores melius & libere habuerunt. Yet alſo ſome of their great offices are graunted by patent for a day, as the office of the lord high ſteward of England was to John lord Ruſſell lord priuye ſeale at the coronation of king Edw. 6. *Habend. per ſpatium vnius diei tantum, videlicet, ab ortu uſque ad occaſum ſolis ejuſdem, &c.* which patent I have ſeene, and obſerued the like in records of others. Of later tyme in her majeſty's reigne commiſſions *durante beneplacito* haue bin made for determining and doeing diuers things concerning the office of the earle mareſchal, to ſeuerall perſons; as after the deceaſe of Gilbert earle of Shrewſbury earle marſhall, ſuch a commiſſion was graunted to William lord Burghley lord treaſurer, the now lord Admirall, Henry lord Hunſdon lord chamberlaine; and as I take it, to the now lord treaſurer. And the like at this preſent, is in force to the lord treaſurer, lord admirall, and earle of Worceſter.

Another graunt I fynd of the ſame office with another limitation, 11 H. 6. to John earle of Huntington, viz. *Officium mareſchalciæ Angliæ habend. per ſe vel, &c. durante minore ætate Johannis filij, & hæredis Johannis nuper ducis Norff. in cuſtodia exiſtentis.* It ſtandeth with great reaſon the king ſhould ſoe diſpoſe thereof, or elſe hee and his realme may bee vnſerued, when offices of inheritance of juſtice, and eſpeciall ſeruice deſcend vnto infants, as the conſtable, the mareſchall, the great chamberlaine, and others inferiour, as ſheriffewicks, haue bin giuen and held: of which ſort, at this day, the office of the lord great chamberlaine in the now earle of Oxford, and the office of ſheriffe of the county of Weſtmerland, in the now earle of Cumberland,

Cumberland, are hereditary, which were boeth the queene's wards.

Some haue held the ſame office for life,

As *Willielmus de Monte Acuto comes Sarum*, had the ſame 12 E. 3. of the graunt of that king *ad terminum vitæ*. And R. 2. made a graunt to Thomas earle of Nottingham of the office of mareſchall of England, *habend. ad totam vitam ſuam*. Of which ſort are diuers others.

Of graunts of inheritance.

Rogerus Bygod com. Norff. & mareſchallus Angliæ, by his deed dated 12 Martij 30 E. 1. enrolled in the Tower: *Reddidit & remiſit, &c. eidem regi quicquid juris, honoris, & dominij noſtri comit. in comitatu Norff. & mareſchalciam Angliæ habend. &c. eidem regi, & hæredibus ſuis, cum omnibus & ſingulis ad ea qualitercunque pertinentibus.* And 12° Julij following, a regraunt from the ſame king by the ſame words to the ſaid Roger, and the heyres of his body.

After the ſayd office came againe to the crowne, Edward the Second maketh the like graunt to his brother Thomas de Brotherton earle of Norffolke, viz. *Mareſchalciam Angliæ cum omnibus ad ea pertinentibus, habend. ſibi, & hæredibus maſculis de corpore, faciend. inde regi, & hæredibus, ſeruicia quæ progenitoribus ſuis quondam regibus Angliæ debebantur, ante quam ea mareſchalcia ad manus patris ſui per donationem, &c. Rogeri de Bygod deuenerit.*

King Richard the Second, 12° Januarij anno 9. reciting the aforeſayd graunt for life made to the ſayd Thomas earle of Nottingham, viz. by the words *officium mareſchalli, Angliæ, de vberiori gratia conceſſit eidem Thomæ officium prædictum, vna cum nomine & honore comitis mareſchalli, habend. ſibi, & hæredibus maſculis de corpore, &c. cum omnibus feod. &c.*

The firſt name of earle mareſchall.

One other the like I haue ſeene in the rolles, 28 Junij, 1 R. 3. to John Howard duke of Norffolke, and to the heyres males of his body. Others of inheritance, hauing made ſome ſearch, I haue not found.

Of

Of the honour, authority, fees, and allowances belonging, enjoyed, or held with the ſayd office.

1. The cheifeſt power and authority thereof hath bin obſerued for warrs, as namely William Marſhall earle of Penbroke in the beginning of king Henry the 3. tyme is ſayd to be generall of king John's army. It is alſo ſayd in Mathew Paris, ſhortly after the entrance of king H. 3. to the crowne, as followeth: *Willielmus mareſcallus regis cuſtos conuocari fecit omnes caſtellanos ad regem ſpectantes, & milites qui erant in præſidijs caſtrorum in partibus diuerſis, vt ad Newerc ad edictum regis conueniant, vt pariter cum ipſis obſidionem caſtri Lincolnienſ. diſſoluere laborarent.* It ſeemeth further by the hiſtory of that king, that this man as well by his office and place, and for that the king was young, had the whole management of the warrs during his life; and ſoe his ſonne William holding the title after him, had in Ireland and Wales againſt prince Leoline and others; he being the cheife commander of the warrs, and by the ſame Matthew Paris writing of his death, is termed to be *in militia vir ſtrenuus.* Hollingſ. P. 197. Page 355.

It ſeemeth of auncient tyme it was an high office, and the eſtate thereof, as that of the juſtice of England, lord high ſteward of England, and conſtable of England, which haue decayed and growne out of uſe: but this office, though now more in uſe, and the authority thereof better reteyned then that of the others, yet are other officers of later tyme growne of higher ranke, which were inferiour, as the lord treaſurer, and the lord priuy ſeale, who togeather with the ſteward of the houſe were 20 R. 2. in the patent of Thomas earle of Nottingham of this office of earle mareſchall, all three written after Barons, viz. *Teſtibus Tho. archiepiſcopo Cant. R. London. Tho. Winton. Jo. Elien. E. Exon. cancellario: epiſcopis Jo. Aquitan. & Lancaſtr. Edm. Ebo. ducibus avunculis noſtris. Henr. Derby. Ed. Rutland. Henr. Northumbr. comitibus. Reg. Grey de Ruthyn. Rad. de Neuill, Joo Luell, militibus. Rog. Walden decano Ebo. Theauſ. noſtro. Tho. de Percy ſeneſchal. hoſpitij. Guidon Mone cuſtod. priuati ſigilli.*

ſigilli. This office hath alſo an higher title than any, viz. earle mareſchall, whereas the reſt are called lord treaſurer, lord ſteward, &c and I think that this title of earle mareſchall began in the ſayd graunt of 9 Richard 2. to the earle of Nottingham, which importeth, as I conceaue, becauſe Thomas de Brotherton ſonne and brother to two kings had it not in his patent, nor Roger Bigod, whoſe patent is the eldeſt that I haue reade, that therefore none before had that title. William Marſhall is ſometyme called earle marſhall, but being earle of Penbroke, it might ſoe be added to his ſtile or title, and cannot otherwiſe be allowed, vnleſs the graunt were extant to proue it.

This hath bin alſo a great office for authority and gouernment, as that in Mathew Paris of the ſayd William Marſhall in theſe words; *poſt mortem regis Johannis Henricus tertius coronatur, & remanſit in cuſtodia Willielmi comitis Penbrok, magni videlicet mareſchalli, qui miſit literas ad omnes vicecomites regni Angliæ & caſtellanos, præcipiens ſingulis, vt regi nuper coronato eſſent intendentes, promittens omnibus poſſeſſiones pariter, & donaria multa, ita vt dicto regi fideliter adhærerent*; and in another place *Willielmus mareſcallus regis cuſtos, & regni*; and in another place, at his death, *Willielmus ſenior mareſcallus regis, & rector regni*; which high titles for the greatneſs of his office, and for his worthyneſs were aſcribed vnto him. Mr. Lambert writeth in his booke, the lord chancellour, lord keeper of the great ſeale, the lord ſteward of England, the lord mareſchall, and conſtable of England, &c. haue cloſed in their offices a creditt for conſeruation of the peace ouer all the realme, and may award precepts and take recognizances for the peace, and voucheth Marrowe and Fitzherbert.

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By the ſtatute of 13 Richard 2. cap. 2. the mareſchall is admitted as a judge by theſe words: if any will complaine, that any plea be commenced before the conſtable and mareſchall, that might be tryed by the law of the land, the ſame complaynant ſhall haue a priuy ſeale of the king, without difficulty, to the conſtable and mareſchall, to ſurceaſe.

And

And 18 Edward 3. the king addreſſed a writt to the treaſurer and barons of the exchequer in forma ſequenti: *Edwardus Dei gratia rex Angliæ & Franciæ, & dominus Hiberniæ, theſaurario & baronibus ſuis de Scaccario ſalutem; volentes certis de cauſis certiorari tam de feodis, quam aliis quibuſcunque quæ pertinent ad officium comitis mareſchalli, & mareſchalciæ Angliæ, tam in Scaccario noſtro, & in alijs placeis noſtris & in hoſpitio noſtro, quam alibi in Anglia, ſiue extra, tam gueræ, quam pacis temporibus, ac de terris & redditibus, &c.* whereupon was certified *inter alia videlicet.* In record. infra Tur. London.

Item in Rubeo libro Scaccarij, in quo annotatur, qualiter officiarij, & miniſteriales regis ſeruierunt, & quid ad eorum pertinuit officium die coronationis Alianoræ quondam reginæ Angliæ vxoris regis Henrici filij regis Johannis, continetur ſic.

De officio mareſchalciæ ſeruiuit Gilbertus Mareſchallus comes de Strigul, cujus eſt officium tumultus ſedare in domo regis, liberationes hoſpitiorum facere, oſtia aulæ regis cuſtodire. Recipit autem de quolibet barone facto milite a rege, & quolibet comite eo die palefridum ſuum cum ſella.

Item mareſchallus in Scaccario, ad cujus curam inter alia pertinet, tallias debitorum quas vicecomites redäiderint, & quæ annotantur in rotulo, mittere ſeorſum forulo ſuo, & debitores non facientes de ſummenitione, qui meruerint comprehendi ſeruare, & ſoluto Scaccarii diei, ſi voluerit in carcerem mittere cuſtodiæ publicæ, non tamen in vincuis: percipit ex antiqua conſuetudine de ſingulis hujuſmodi debitoribus, dum in cuſtodia ſua fuerint quolibet die dimidiam marcam, de hijs quæ pertinent ad officium mareſchalli aliud penes Scaccarium non comperimus.

Inferiour offices in the guiſt of the earle mareſchall by graunt.

The former mentioned graunt of 9 Richard 2. to Thomas earle of Nottingham is recited in a new graunt of 20 Richard 2. with theſe words added: *volentes proinde pro ſtatu, & honore ipſius comitis uberius prouidere, conceſſimus, &c. dicto comiti dictum officium, &c. habendum ſibi, &c.*

&c. cum omnibus officijs commoditatibus, &c. tam in curijs noſtris, quam alibi eidem officio ſpectantibus, &c. & adeo plene, libere, &c. ſicut Thomas de Brotherton, comes Norffolk, &c. ſeu Rogerus le Bigott, &c. habuerunt, &c. volentes vlterius, &c. quod officium mareſchalli in banco noſtro, quod Johannes Wykes tenet ad terminum vitæ ſuæ ex conceſſione noſtra, & officium mareſchallum in Scaccario noſtro, quod Ricardus Gaſcoygne tenet ad vitam ex conceſſione fratris noſtri Thomæ comitis Cant. nuper mareſchalli Angliæ, ac etiam officium proclamatoris mareſchalli coram ſeneſchallo & mareſchallo hoſpitij noſtri, quod Guido de Alleſley tenet ad vitam ex conceſſione Edwardi nuper regis Angliæ aui noſtri, quæ quidem officia poſt mortem prædictorum Johannis, Ricardi, & Guidonis ad nos, & hæredes noſtros reuerti debent, remaneant præfato comiti mareſchallo, habenda ſibi, & dictis hæredibus ſuis maſculis imperpetuum. The very like words for thoſe offices are conteyned in the graunt of the ſayd office to John Howard duke of Norffolk 1 Richard 3. in which graunt of 20 Richard 2. there is this further clauſe, videlicet: *conſideratis inſuper ſtrenuitate, & nobilitate ipſius comitis, & vt ipſe officium prædictum decentius & honorificentius de cætero facere valeat & exercere, conceſſimus, &c. eidem comiti, quod ipſe & dicti hæredes mareſchalli Angliæ ratione officij prædicti habeant & gerant, & deferant tam in præſentia noſtra & hæredum noſtrorum, quam, in abſentia quendam baculum aureum, circa vtrumque finem de nigro annelatum, & cum ſigno armorum noſtrorum in ſuperiori fine dicti baculi, & cum ſigno armorum dicti comitis in inferiori fine ejuſdem baculi ornatum, non obſtante quod idem nunc comes tempore ſuo, ſeu præfati comites Norffolc vel cantij, vel aliquis qui dictum officium mareſchalli Angliæ ante hæc tempora habuerunt, ligneum baculum portare, ſeu deferre conſueuerunt.* For the matter and manner of the ſayd rodd the patent of 1 Richard 3. doeth agree: in which patent of Richard 3. beginneth the fee or annuity of twenty pounds *per annum*; it appeareth alſo by an inquiſition of 13 Henry 4. *quod Tho. dux Norffolk defunct.*

tenuit dictum officium vna cum officio ſeruientis mareſchalli, nec non officium clerici mareſchalli in curia mareſchalli hoſpitij domini regis, & alibi, &c. quæ quidem officia ſpectant, & pertinent a tempore, de quo non exiſtit memoria, &c. dicto officio mareſchalli Angliæ.

And further in 9 Edward 2. and 18 Edward 3. vpon certificates out of the exchequer into the Tower vpon the like writts as aforeſayd, touching the fees of the mareſchall of England in the king's houſe, it appeares as followeth: *quod magiſter mareſchallus percipere conſueuit, & habere conſimile feodum, ſicut Henricus de la Pomray, ſi extra domum comederet, 2 d. in die & vnum ſimenellum ſal. & vnum ſectar. vini expens. & vnum Cereolum, &c. 24 fruſt. candel. ſi autem intra, 14 d. & dimid. ſextar. vin. expenſ. & candel. plenarie: et quod quatuor mareſchalli, qui ſeruiunt familiæ regis, tam clericis, quam militibus, quam etiam miniſtris die qua faciunt herbergeriam, vel extra cur. morantur in negotio regis, 8 d. in die & vnum gallo. vini expens. & 12 fruſt. candel. ſi intra, 3 d. in die hominibus ſuis in die & candel. plenarie. quod ſi aliquis mareſchallorum miſſus fuit in negotio regis. 8 d. tantum: ſeruientes mareſchallorum ſi fuerint miſſi in negotio regis, vnuſquiſque, 3 d. in die; ſin autem in domo regis, comedentur.* With this further clauſe in the certificate of 18 Edward 3. viz. *magiſter mareſchallus ſimiliter, et præter hac debet habere dicas de donis, & liberationibus, quæ fuerint de theſauro regis, & de ſua camera, & debet habere dicas contra omnes officiales regis, vt teſtis per omnia.*

N° XXV.

N° XXV.

Of the ſame.

By ANONYMOUS.

FOR the etimology of mareſchall, I hold it the ſoundeſt opinion, that he hath his name of gouernment of the horſes, ſince Tillius in his ſecond booke of the commentaryes of France writeth this perſon to be *magiſter equorum*, ſaying, *mareſchalli vero erant hippocomi, compoſita voce ex ſermone inferioris Germaniæ, ubi marre equum ſignificat. ſchallk vero ſervum, vel officialem vt ſit is, qui præeſt equis majoribus*; which deriuation is found in the laws of king Clotharius giuen vnto the Almaines, whereunto agreeth Beatus Renanus, ſaying, the word mareſchall is made *a marca antiquo vocabulo equum ſignificante*, as hath Pauſanias, ſaying, that the Galli that came into Greece with Brennus had this word trimarca, ſignifying the ſight of three horſes, for they called a horſe marca, and to this day the Welchmen call a knight or horſeman marcogh; and amongſt vs in England in the tyme of Henry 3. the ſtable of horſe was called mareſchalcia, as Matthew Paris writeth, that the mareſchall of Guy of Luſignian, halfe brother vnto Henry 3. did ſay vnto the porter of St. Albans, when the ſayd mareſchall did come for lodging and horſeroome for his maſter in that houſe, *vbi eſt mareſchalcia ad equos noſtros ſtabulandos, & monſtratum eſt ei longum ſtabulum hoſpitij*; yett ſome there are which hardly, and beyond reaſon deriue this word mareſchall of marcke, which by Anſigiſus is taken for a limitt and bound, as Belforeſt who thinketh better, that theſe mareſchalls, magiſtrates of warre, ſhould be called judges of limitts and frontiers, then judges on horſeback, as Budæus would haue them; if that were ſoe, they ſhould rather be called a marqueſs then mareſchall; for they tooke their name from *marca* a limitt or bound. This office was belonging to the emperours of Conſtantinople, but by the name of *protoſtator*, whoſe office was to hold

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the emperour's horſe, and to leade him to the gate of the palace, which *protoſtator*, Nicetas Choniates ſpeaking of Jofridus in the life of Baldwinus Flandrus, doeth make to be mareſchall, whom he calleth μαρισχαλκος in this ſort μαρισχαλκῳ ἦν ταξίωμα ὁ ἀνὴρ, δηλοῖ δὲ καθ' ἕλληνας ἡ φωνὴ τον πρωτοστρατωρα; *mareſchallus ſignificat virum exercitus ordinem diſponentem, græce protoſtrator*, that is, *qui caſtris præeſſe aicitur*. This mareſchall, ſoe termed as well in England, as in Germany, France, and other places, was to haue the gouernment of military forces, eſpecially of horſemen, though boeth of horſe and foote, and to haue the marſhalling and ordering of the campe, from which this word marſhalling is metaphorically uſed amongſt vs, in placing of men at great aſſemblyes, and matters of armoury, when the herald ſayth, he marſhalleth ſix or ſeauen coates.

For the authority and office of the mareſchall here in England, I referre you to Fleta, lib. 2. cap. 4 & 5. and to an old rolle in French, intituled, The cuſtomes of Thomas of Brotherton mareſchall of England, and to the Red booke of the exchequer fol. 30. in all which is a liberall diſcourſe of his office, authority, fees, preheminence, and other matters belonging to him, as well in peace as in warre. For the firſt whereof he is called by Budæus *tribunus militum*, by the French the maſter of the campe, by the Italians maſter of the horſemen, whoſe authority amongſt the French [as it was alſo in England; for moſt of our laws and cuſtomes are drawne from thence] is ſett downe at large in Belforeſt in the firſt tome of his works, treating of the officers of the houſe of France, ſaying, that it appertaines to the lords conſtable and mareſchall of France, or their leiutenants at the marble table to hold plea, and to haue the examination of all offences, as well of horſemen as footemen, as well of the campe, as ſuch as goe and come, as of ranſomes, bootyes, and all debates ariſing thereof, of priſoners taken, of ſuch as take wages and runne away, of ſuch as diſobey their ſuperiours, and to conclude, of all præeminences, authority, and power belonging to the conſtable; for he doeth in all military cauſes, as aſſiſtant to

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the conſtable being preſent, and as his deputy being abſent, communicate with the conſtable; whereunto conſenteth Scipio Ammirato in the Neapolitan familyes.

But to come to our mareſchall of England, he hath now to his more ſtate, a rod of gold deliuered him at his creation to beare always with him; the firſt that by patent had that golden rod [for before it was of wood, ſuch as the mareſchall's mens tipſtaues be] was in the tyme of Richard 2. who in the 22d of his reigne, making Thomas duke of Surrey mareſchall of England, did inſert into his patent theſe words; *conſideratis inſuper ſtrenuitate, & nobilitate ipſius ducis de Surrey, vt ipſe officium prædictum decentius & honorificentius de cætero facere valeat, conceſſimus pro nobis, & hæredibus noſtris eidem duci Surrey, quod ipſe ratione officij ſui habeat, gerat, & deferat, tam in præſentia noſtra, quam in abſentia, baculum aureum circa utrumque finem de nigro ammulatum, & cum ſigno armorum noſtrorum in ſuperiori fine dicti baculi, & cum ſigno armorum ipſius ducis Surrey in inferiori parte ipſius bacuti ornatum, non obſtante quod præfati nuper comites, aut aliquis alius, qui dictum officium mareſchalli Angliæ antehac habuerunt baculum ligneum portare conſueuerunt.* And becauſe I am entered into records, I will deliuer one record more of a mareſchall of England, that it may appeare how vnfitt it is, that offices of judgement ſhould be granted to perſons and their heyres, without ſpeciall prouiſo therein; for after that Charles Brandon duke of Suffolke had ſurrendered the patent of the mareſchalcy of England, and that Henry 8. had granted the office to Thomas Howard duke of Norfolke, and his heyres, there was a prouiſo put in the grant thus; *prouiſo ſemper quod ſi contingat in poſterum, aliquos hæredes maſculos prædicti ducis inhabiles, invalidos, vel impotentes fieri, ratione minoris ætatis, ægritudinis, debilitatis corporis, ſeu membrorum, vel ratione fatuitatis, vel lunaciæ, ita quod officium ad honorem regiæ majeſtatis, & regni vtilitatem exercere nequeant, tunc volumus, quod in hujuſmodi caſibus diſtributio & donatio officij, pro hac vice tantum, ſcilicet dum dicti hæredes infra ætatem exiſtunt, aut vllo modo*

inhabiles

inhabiles fuerint, ad nos, & ſucceſſores pertineat, & ſpectet, ita quod ſemper, cum ad ætatem pervenerint, & validi fuerint, & habiles ad officium exercendum, quod tunc hujuſmodi hæredes habeant, teneant, & gaudeant. Yet former records were, that the ſame office being granted to heyres generall, noe ſuch exception was had, but that the ſame office deſcended to women, who executed it by their huſbands and ſonns, as did the Bigotts, which came to the ſame by the marriage of the eldeſt daughter of William earle of Penbroke, mareſchall; and the Mowbrays, who had the ſame by Margaret counteſſe mareſchall their grandmother, daughter, and heyre of Thomas of Brotherton earle of Norfolke, and mareſchall of England.

And ſoe I will conclude with one record more concerning the virge of the prince's houſe, for that alſo is a ſecondary office extracted from the mareſchall of England, who hath further the guift of the mareſchall of the exchequer, of the king's-bench, and other inferiour offices belonging to his place; how the protectour, or guardian of England, in the king's abſence, ſhall hold the virge by the compaſs of twelue miles, and execute all things within the ſame, as were done, when the king himſelf was preſent in perſon, and that the king had his proper virge; for Edward 3. in the 46 yeare of his reigne [as appeareth in the patents of that yeare, membr. 23.] making Richard the ſonn of the black prince, cuſtos, or warden of England, whilſt the king paſſed the ſeas, did write vnto his ſteward and mareſchall of his houſe thus; *pax noſtra ubique infra regnum Angliæ, & maxime infra virgam hoſpitij dilecti, & fidelis noſtri Richardi filij chariſſimi primogeniti noſtri Edwardi principis Aquitaniæ, & Walliæ, cuſtodis Angliæ, videtur per duodecim leucas in circuitu ejuſdem hoſpitij, dum nos extra ipſum regnum morari contigerit, inuiolabilis.* Leſt I ſhould be too teadious, here I will end my ſimple diſcourſe.

Liberatio navium per comitem mareſcallum.

Rot. Pat. anno XXVI° H. III. m. 3.

REX omnibus, &c. ſalutem Sciatis quod nolumus quod per liberationem navium quam Walterus Mareſcallus comes Pembrochiæ fecit vel per liberationem quam H. de Bohun comes Eſſexiæ & Hertfordiæ fecit contra transfretationem noſtram in Vaſconiam anno &c. 26 apud Porteſmutham aliquid juris neutri ipſorum accreſcat ſed quam citius intendere poterimus in partibus tranſmarinis vel citra volumus quod plenius inquiratur utrum ad ipſum comitem mareſcallum tantum vel ad ipſos ambos in communi pertineat predictarum navium liberatio Incujus &c. teſte rege apud Porteſm. vii° die Maij.

Pro ſeneſcallo et mareſcallo hoſpitii regis.

Rot. Pat. anno LIV. Hen. III. m. 20.

REX dilecto clerico ſuo Petro de Winton. cuſtodi garderobæ ſuæ ſalutem Licet de conſenſu & aſſenſu noſtro & totius conſilii noſtri proviſum ſit et unanimiter conceſſum quod omnia feoda quæ percipi conſueverunt ad ſcaccarium noſtrum ceſſent & quod nemini aliud ibidem nomine feodi liberetur Nos tamen dilectis & familiaribus militibus noſtris Willielmo de Winterſhall & Willielmo Aette ſeneſcallis noſtris & Willelmo Belet & Radulpho de Bakepus nobis in menſa ſervientibus & intendentibus & Stephano de Edeworth Willielmo de Faukeham Galfrido de Percy Waltero de Burgh Rogero de Wantham Gilberto filio Hugonis Petro Everard mareſcallis noſtris pro eo quod ipſi juxta latus noſtrum noſtris jugiter intendunt obſequiis graciam facere volentes ſpecialem conceſſimus prefatis Willielmo de Winterſhall quadraginta marcas Willielmo de Aette viginti marcas Willelmo Belet viginti marcas Radulpho de Bakepus viginti markas Stephano de Edeworth viginti marcas Willielmo de Fawkeham viginti marcas Galfrido de Percy viginti marcas

Waltero

Waltero de Burgh viginti marcas Rogero de Wanthan viginti marcas Gilberto filio Hugonis viginti marcas Petro Everard viginti marcas ſingulis annis percipiend. de Garderoba noſtra pro vadiis ſuis videlicet unam medietatem ad feſtum Paſchæ et aliam medietatem ad feſtum ſancti Michaelis quamdiu ſteterint in ſervicio noſtro in officiis predictis Ita quod ſi alicui eorum provideamus de warda vel eſcaeta aliqua quæ nobis accedere poterit tantum decedat ei per annum in vadiis predictis quantum warda vel eſcaeta illa valeat per annum vel etiam ad vendendum præ manibus Et ideo vobis mandamus quod eis vadia ſua ſingulis annis ad eoſdem terminos habere faciatis de Garderoba noſtra predicta in forma ſupra predicta Nos enim vadia illa vobis in compoto veſtro volumus & faciemus allocari Teſte rege apud Weſtm. xxv^to^ die Marcii.

Mariſcall. Ang. fac. deputat.

Rot. clauſ. anno LIV° H. III. in dorſo, m. viii.

MEMORANDUM quod die dominico in craſtino invencionis ſanctæ Crucis anno &c. 54 venit Rogerus le Bygod filius Hugonis le Bygod nepos Rogeri le Bygod com. Norff. & mareſcallus Angliæ cum literis ejuſdem pendentibus huic Rotulo per quas idem comes rogavit dominum regem ut ad officium mareſcalciæ nomine predicti Rogeri comitis faciend. dilectum nepotem ſuum dominum Rogerum le Bygod predictum ſuum facit attornatum quem idem comes ad dictum officium exequend. nec non illum quem ad hoc loco ſuo poſuerit admitteret ſicut in litteris predictis plenius continetur Et dominus rex habito ſuper hoc tractatu cum domino Edwardo filio ſuo ipſum admiſit ad officium mareſcalciæ nomine predicti comit. faciend. quamdiu eidem domino regi placuerit et pro bono et fideli ſervicio quod predictus Hugo pater ſuus regi impendit rex conceſſit eidem Rogero nepoti predicti comit. quod aliquem fidelem loco ſuo ad officium illud faciend. deputare poſſit ad voluntatem domini regis Præſentes fuerunt prædictus

dominus Edwardus W. de Bello campo com. Warr. Rogerus de Mortuomari Robertus Waler Robertus Aquillon Reginaldus filius Petri Walterus de Morton Reginaldus de Grey et plures alii magnates Teſte rege apud Weſtm. iiij° die Maij.

Literæ Rogeri Bygod.

Egregio principi domino ſuo reverendiſſimo domino Henrico Dei gratia regi Angliæ domino Hiberniæ et duci Aquitaniæ ſuus ſi placet mareſcallus Rogerus Bygod com. Norff. ſalutem & debitum pro veribus famulatum ad officium mareſcalciæ noſtro nomine faciend. dilectum nepotem meum dominum Rogerum Bygod meum facio attornatum quem ad dictum officium exequendum nec non illum quem ad hoc loco ſuo poſuerit admittere veſtræ excellentiæ placeat reverenda valeat excellentia veſtra.

Thomas de Brotherton com. Norff. de feodis mareſcalli.

Rot. clauſ. anno XI° Edw. II. in dorſo. m. xxv.

REX ſeneſcallo hoſpitii ſui & cuſtodi garderobæ ſuæ ſalutem Tranſcriptum cujuſdam certificationis ſuper quibuſdam feodis quæ mareſcalli Angliæ qui pro tempore fuerunt et eorum miniſtri tempore progenitorum noſtrorum quondam regum Angliæ de hoſpiciis eorundem progenitorum noſtrorum percipere conſueverunt quam quidem certificationem theſaurar. et barones noſtri de Scaccario nobis ad mandatum noſtrum miſerunt vobis mittimus preſentibus interclusum mandantes quod inſpecto tranſcripto predicto dilecto fratri & fideli noſtro Thomæ de Brotherton com. Norff. et mareſcallo Angliæ & illis quos ad officium mareſcalciæ conſtituerit loco ſuo feoda hujuſmodi habere fac Teſte rege apud Nottingh. xv die Julij.

REX theſaurar. & baronibus ſuis de ſcaccario ſalutem Volentes certiorari quæ & cujuſmodi feoda mareſcalli Angliæ qui

qui pro tempore fuerunt & eorum miniſtri temporibus progenitorum noſtrorum videlicet de pane vino cereolis & candelis percipere & habere conſuaverunt vobis mandamus quod ſcrutatis rotulis et aliis memorandis dicti Scaccarii noſtri de eo quod deinde inveneritis nos ſub ſigillo ejuſdem Scaccarii diſtincte et aparte ſine dilatione reddatis certiores hoc breve nobis remittentes. Teſte rege apud Weſtm. tertio die Junij.

Excellentiſſimo principi ac domino ſuo reverendo domino Edwardo Dei gratia regi Angliæ illuſtro domino Hiberniæ & duci Aquitaniæ devoti ſui theſaurar. & barones de Scaccario ſuo fidele ſemper obſequium cum omni reverentia & honore mandavit nobis veſtra dominatio reverenda quod ſcrutatis rotulis & aliis memorandis Scaccarii veſtri vos rederemus certiores quæ et cujuſmodi feoda mareſcalli Angliæ qui pro tempore fuerunt et eorum miniſtri temporibus progenitorum veſtrorum quondam regum Angliæ de hoſpiciis eorundem progenitorum veſtrorum videlicet ut de pane vino cereolis & candelis percipere & habere conſueverunt Super quo ſciat veſtra excellentia reverenda quod ſcrutatis rotulis & memorandis dicti Scaccarii veſtri comperimus quod magiſter mareſcallus percipere conſuevit & habere conſimile feodum ſicut Henricus de la Pomeray videlicet ſi extra domum comederit ei in die iij. ſolid. et unum ſimenellum ſal. & unum ſextar. vini expenſ. & unum cereolum & xxiiij fruſtra candel. ſi autem intra xiiij *d.* & dimid. ſextar. vini expenſ. & candelam plenarie Item comperimus quod quatuor mareſcalli, qui ſerviunt familiæ regis quam clericis quam militibus quam etiam miniſtris die qua faciunt herbergeriam vel extra curiam morantur in negotio regis viii *d.* in die & unam gallonem vini expenſ. & xij fruſtra candel. ſi intra iij *d.* in die hominibus ſuis in die & candel. plenarie Quod ſi aliquis mareſcallorum miſſus fuerit in negotio regis viii *d.* tantum ſervientes mareſcallorum ſi fuerunt miſſi in negotio regis unuſquiſque iii *d.* in die ſin autem in domo regis comedentur Alium inde non comperimus Breve quidem veſtrum nobis ſuper

p emiſſis

premiſſis directum vobis mittimus preſentibus interclusum Valeat veſtra dominatio reverenda per tempora diuturna.

Pro Thoma comite Norff. & Mareſcallo Angliæ de Officio Mareſcalli in manum Regis capt. eidem Comiti reſtituendo.

Rot. Clauſ. a°. XVII°. Edw. II. in dorſo m. 31.

THOMAS comes Norffolciæ & mareſcallus Angliæ per petitionem ſuam domino noſtro regi apud Nottingham in octabis Sancti Martini anno &c. xvii° porrectam ſupplicavit eidem domino noſtro regi ut cum officium mareſcalciæ predictæ quod ad ipſum comit. & mareſcall. Angliæ pertinet habere virtute doni dicti domini regis ſibi facti coram juſticiariis dicti domini regis ad placita ſua coram ipſo domino rege tenenda aſſign. captum fuiſſet in manum dicti domini regis placeret eidem domino regi officium illud dicto comiti reſtituere Et Henricus de Staunton & ſocij ſui juſticiarij dicti domini regis ad dicta placita tenenda aſſignati tunc preſentes coram ipſo domino rege inde allocuti dixerunt quod cum nuper in comitatu Lancaſtr. fuiſſent placita predicta tenentes nullus fuit pro predicto comitatu officium predictum faciens propter quod hoc notificato dicto domino regi idem dominus rex quendam de ſuis aſſignavit ad dictum officium in defectu predicti comitis faciendum Et dictum fuit prefato comiti quod pro defectu illo finem faceret dicto domino regi ſi ſibi videret expedire Et idem comes finem fecit cum dicto domino noſtro rege per centum libras pro defectu ſupradicto Et idem dominus noſter rex per finem illum reſtituit dicto comiti officium ſupradictum & de gratia ſua ſpeciali remiſit & pardonavit prefato comiti dictas centum libras & oretenus injunxit predicto comiti quod ipſe in officiis mareſcalli illius in curia dicti domini regis ſuo nomine tales deputaret qui ſufficientes & idonei eſſent pro ipſo domino noſtro rege & populo ſuo & dictum comitem indempnem ſervarent & permunirent eundem comitem quod ſi extunc per aliquem per ipſum

comitem

comitem in officiis illis vel eorum aliquo deputand. ut dampna aliqua predicto domino regi evenirent quod idem dominus rex inde caperet ad comitem ſupradictum.

De Extractis Finium coram Seneſcallo Regis ad Scaccarium Regis mittendum.

Rot. Pat. a°. XVI^to^. Edw. II. m. 2.

REX ſeneſcallo hoſpicii ſui qui nunc eſt vel qui pro tempore erit ſalutem Quia volumus quod extractæ de finibus amerciamentis exitibus forisfacturis & omnibus aliis proficuis ad nos ſpectantibus de placitis & querelis coram vobis & mareſcallis dicti hoſpicii placitatis ſingulis annis ad duos terminos Videlicet ad feſta Sancti Michaelis & paſchæ ad Scaccarium noſtrum plenarie liberentur vobis mandamus firmiter injungentes quod extractas rotulorum veſtrorum de finibus amerciamentis exitibus forisfacturis & aliis proficuis ad nos ſpectantibus de placitis & querelis hujuſmodi diſtincte & aperte factas ſingulis annis ex nunc ad terminos predictos ad dictum ſcaccarium liberari fac Et hoc nulla tenus omittatis Teſte rege apud Eborum tercio die Julij.

Per ipſum Regem.

Feoda pertinentia ad Comitem Mariſcallum.

Petitiones Parliament. apud Winton. a°. 4^to^ Edw. III. inter aila, N° 81.

A NOSTRE ſigneur le roy d'Engleterre prie Thomas counte Norffolk & marſhall d'Engleterre ſon uncle q'il luy pleiſe parmy ſon bon conſeill de performer a lui les dix mill marchees de terre queux le noble roy Edward ſon ael & pere au diſt counte lui graunta &c.

Item prie le diſt counte q'il pleiſe a noſtre diſt ſeigneur le roy commander qu'il penſe eſtre ſervy de ſes fees & des autres choſes qui appendent a ſon office de la marechauſie dedeinz l'oſtell & dehors auxi avant come ſes predeceſſeurs

counte

countes mareſchauls ount eſtre ſervy ſolone ces qui eſt contenuz en une bille des parcells a ceſte peticioun annexe.

Soit mande as treſorer & chambreleins & auxy as gardeyn de la garderobe que il cherchent lour remembrances des fees que mareſchaux ont receue einz ces heures & certifient le roy il adonque ſe aviſera.

Fait a remember des parceles que le counte mareſchal doit prendre en l'oſtel noſtre ſeigneur le roy c'eſt a ſavoir quand le counte eſt dedeins la verge & ne mangenſſe en la court ijs le jour & un ſymenel ſale un ſeſter de vin & un torche & xxiiij mennes chaundeles de ciere Et s'il mangenſſe en la court cheſcun jour xiiij. & demy ſeſter de vin. Et cheſcun an a le pentecouſte vij annes de ſcarlet un drap de colour de chevalers & deux forurs de ventre de conigus Et as quatre mareſchalls qui ſervent a la meſure le roy auxi bien as chevelers come as clerks & auts miniſtres le jour q'il facent herbegage & hors de la court le roy mangenſſent il prendreunt oent devers le jour un gealon de vyn & xij mennes chandeles & s'il mangenſſent dedeinz la court, il aueront treis deners le jour & chandele pleuerement Et ſi nul mareſchal ſoit maunde en les buſoignes le roy il prendra le jour viii[d] Et ſi nul des ſervants les dits mareſchals ſeit mande en les buſoignes le roy, il prendra le jour iij[d]. des queles parceles qui mort eſt comanda par ſes lettres a ſon feneſchal & treſourer de ſon hoſtel q'il feiſſent la liveree a diſt counte par certificacion qui lui vint hors de ſon eſchekiere des parceles avant dites.

Item le diſt counte deveroit prendre pour ſon fee al homage faire de cheſcunc counte & exceveſque xl. des eveſques & baronns qui tiennint par baronie c. marcs de chevelers v. marcs & des ſergeants ſolone la purpartie de lour tenure.

Item le diſt counte deveroit prendre cheſcun americament & fin dedeinz xl[d]. endreit des hoſteux dedeinz la verge la lyvere ſe deit faire par le counte mareſchal ou ſon leiutenant & par nul autre En dreit des attachmentz des gens del hoſtell le roy ou de Foreins il ſe devient faire par le counte mareſchall & ſez miniſtres & par nul autre & s'il ſoient agarde au priſon ſa garde & ne mye aillours.

Item,

Item le diſt counte deit avoir un de ſes clerks come ſon lieutenant a faire les attachments & pur fournir les inwyſes as plees des marchez & un countre roulloux pur le proffit noſtre ſeigneur le roy.

Item en dreit des verges virolces nul homme ne les deit porter dedeinz la verge ſi nonn ceux qui ſount atticle par le diſt count.

De inquirendo de Officio Mareſchalciæ.

Rot. Fin. a°. XVIII. Edw. III. m. 22.

REX dilectis & fidelibus ſuis Roberto de Herle Thomæ de Sibethorpe Johanni de Huton & Richardo de Stoneley ſalutem Quia Willelmus de Monteacuto nuper comes Sarum qui officium mariſchalciæ Angliæ tenuit ad terminum vitæ ſuæ ex conceſſione noſtra quam ei fecimus poſt mortem Thomæ nuper comitis Norfolk & mariſcalli Angliæ qui officium illud tenuit ſibi & heredibus maſculis de corpore ſuo exeuntibus ex conceſſione domini Edwardi nuper regis Angliæ avi noſtri ita quod ſi idem comes Norff. obieret ſine hærede maſculo de corpore ſuo exeunte predictum officium ad dictum avum noſtrum & hæredes ſuos integre revertertur diem clauſit extremum Et quod poſt mortem prefati comitis Sarum eo quod predictus comes Norffolciæ ſine herede maſculo de ſe obiit ad nos & heredes noſtros reverti debet ut accepimus Aſſignavimus vos tres & duos veſtrum ad officium predictæ mariſcalciæ cum pertinentiis tam in curia mariſcalciæ hoſpitii noſtri & in banco noſtro coram nobis ac in communi banco & in ſcaccario noſtro quam in quibuſcunque aliis placeis noſtris ac locis infra regnum noſtrum Angliæ ubicunque dictum officium exercetur in manum noſtram capiend. & perſcrutari faciend, in curia bancis ſcaccario regis placeis & locis predictis modis quibus expedire noveritis de aviſamento preſidentium placearum earundem quæ & cujuſmodi officia in qualibet dictarum placearum & locorum ſpectant & pertinent ad officium ſupradictum & quæ & cujuſmodi feoda & proficua ſive terræ aut tenementa alibi infra dictum regnum noſtrum qualiter

& quomodo & quantum valeant per annum in omnibus exitibus juxta verum valorem eorundem & de quo vel de quibus officium illud teneatur & per quod ſervicium & quem ſtatum prefati comites in dicto officio habuerunt & utrum predictus comes Norffolk obiit ſine herede maſculo de corpore ſuo legitime procreato necne nec non de omnibus aliis circumſtantiis idem officium contingentibus & ab eo dependentibus prout opus fuerit, plenius veritatem, & ideo Vobis mandamus quod inquiſitiones hujuſmodi ſuper premiſſis & alia predicta in forma predicta facta & inquiſitiones illas & ea quæ ſic inveneritis Nobis ſub ſigillis veſtris trium vel duorum veſtrum & ſigillis eorum per quos premiſſa facta fuerunt in cancellariam noſtram ſive dilatione mittatis & hoc breve Damus autem ſeneſcallo & mariſcallo dicti Hoſpitii noſtri & Juſticiariis noſtris utrorumque bancorum predictorum & theſaurario & Baronibus de ſcaccario predicto & camerariis noſtriis nec non vicecomitibus & aliis miniſtris noſtris per Angliam tam infra libertates quam extra tenore preſentium in mandatis quod vobis tribus & duobus veſtrum quatenus ad ipſos & eorum quemlibet pertinet in premiſſis pareant & intendant prout per vos tres vel duos veſtrum ſuper hac ex parte noſtra fuerint premuniti & quod prefati vice comites, & alii miniſtri noſtri extra placeas predictas venire fac. coram vobis tribus vel duobus veſtrum infra ballivam ſuam tot & tales probos & legales homines de eadem balliva ſua per quos rei veritas in premiſſis melius ſciri poterit & inquiri In cujus &c. Teſte rege apud Weſtminſter. xxxi° die Januarii anno regno ſui xviiii°.

Memorandum, that the return of this commiſſion hath bin carefully ſought for, but cannot be found.

Secunda Pars Patentium

De a° VI^to. Edw. II. m. 18.

REX omnibus Ballivis &c. ad quos &c. ſalutem Recordum & proceſſum coram ſeneſcallo & mareſcallo hoſpitii noſtri & dilecto & fideli noſtro Johanne Wogan nuper habita

habita ſuper deliberationem priſonæ mareſcalciæ noſtræ de Johanne Reddings nuper capto & detento in priſona predicta pro contrafactione privati ſigilli noſtri & de Edmundo de Malolacu per ipſum Johannem de Reddinges de dicta contrafactione ibidem accuſato inſpeximus in hæc verba Placita Aulæ domini regis de corona apud Weſtm. coram Hugone de Audele domini regis & mareſcallo ejuſdem hoſpitii die Veneris in vigiliæ apoſtolorum Simonis & Judæ anno regni regis Edwardi Sexto Johannes de Redinges de hoſpitio domini regis per literas ſuas patentes de privato ſigillo aſſignatas captus & in priſona mareſcalciæ domini regis detentus pro contrafactione privati ſigilli domini regis & pro quibuſdam literis de predicto ſigillo contrafacto conſignatis cum eo inventis venit & inde allocutus dicit quod ſigillum domini regis nunquam contrafecit Dicit tamen quod Edmundus de Malolacu nuper ſeneſcallus hoſpitii predicti die Sabbati proxime poſt feſtum apoſtolorum Petri & Pauli anno regni regis Edwardi nunc quinto apud Abreberth in comitatu Lincoln. dictum ſigillum ſibi liberavit in preſentia domini regis & infra virgam &c. pro quo quidem ſigillo quadringenta talenta aurea eidem Edmundo ibidem tunc ſolvebat & cum quo predictas literas poſtea ſigillavit requiſitus etiam ſi quos denarios virtute aliquorum literarum de predicto ſigillo contrafacto ſigillatarum de aliquibus receperat dicit quod non præterquam viginti marcas quas recepit nomine regis de priore & conventu Mounteacuto per quandam literam de predicto ſigillo contrafacto conſignatam unde quandam indenturam receptionem illam continentem eidem priori & conventui de qua altera pars penes ipſum remanſit Requiſitus inſuper quo dictum ſigillum contrafactum devenit dicit quod illud clam abjecit quando arreſtatus fuerat ita quod inveniri non potuit. Et quia dictus Edmundus attachiatus non exiſtit præceptum fuit mareſcallo quod predictum Johannem remitteret uſque in craſtinum & quod attachiaret predictum Edmundum ita quod eum haberet coram eiſdem ſeneſcallo & mareſcallo ad eundem diem ubicunque &c. ſuper premiſſis reſponſurum Quo die dominus rex Johannem Wogan predictis ſeneſcallo & ma-

reſcallo ad faciendam plenam & celerem deliberationem de predictis Johanne & Edmundo ſuper premiſſis aſſignavit per literas ſuas patentes in hæc verba EDWARDUS Dei gratia rex Angliæ dominus Hiberniæ & dux Aquitaniæ dilecto & fideli ſuo Johanni Wogan ſalutem Sciatis quod cum Johannes de Redings captus & in priſona noſtra mareſcalciæ pro contrafactiones privati ſigilli noſtri & pro quibuſdam literis de predicto ſigillo contrafacto conſignatis eſt detentus ac idem Johannes coram ſeneſcallo & mareſcallo hoſpitii noſtri in curia mareſcalciæ noſtræ ſuper hoc accuſatus & allocutus aſſeruit ſe predictum ſigillum ex liberatione Edmundi de Malolacu nuper ſeneſcalli noſtri hoſpitii predicti recepiſſe & habuiſſe Nos volentes ſuper premiſſis plenam & celerem juſtitiam fieri ſecundum conſuetudinem mareſcalciæ predicte Aſſignavimus vos una cum ſeneſcallo & mareſcallo hoſpitii noſtri predicti ad deliberationem de ipſis Johanne de Redings & Edmundo de Malolacu & plenam & celerem juſtitiam in hæc parte faciend. ſecundum conſuetudinem ſupradictum Et ideo vobis mandamus quod premiſſa una cum prefatis ſeneſcallo & mareſcallo ſine dilatione faciatis & compleatis in forma predicta Mandavimus enim eiſdem ſeneſcallo & mareſcallo quod ad premiſſa facienda una vobiſcum intendant ut predictum eſt In cujus rei teſtimonium has literas noſtras fieri fecimus patentes Teſte meipſo apud Weſtm. 27° die Octobr. anno regni noſtri ſexto.

Et etiam idem dominus rex prefatis ſeneſcallo & mareſcallo aliud breve ſuum mandavit in hæc verba.

EDWARDUS Dei gratia rex Angliæ dominus Hiberniæ & dux Aquitaniæ dilectis & fidelibus ſuis ſeneſcallo & mareſcallo hoſpitii ſui ſalutem Sciatis quod cum Johannes de Redings captus & in priſona noſtra mareſcalciæ noſtræ pro controfactione privati ſigilli noſtri & de quibuſdam literis de predicto falſo ſigillo controfacto conſignatis ſit detentus ac idem Johannes coram vobis in curia mareſchalciæ noſtræ predictæ ſuper hoc accuſatus & allocutus aſſeruit ſe ſigillum predictum ex liberatione Edmundi de Malolacu nuper ſeneſcalli hoſpitii noſtri predicti recepiſſe & habuiſſe Nos volentes

lentes ſuper premiſſis plenam & celerem juſtitiam fieri ſecundum conſuetudinem mareſchalciæ predictæ Aſſignavimus dilectum & fidelem noſtrum Johannem Wogan una vobiſcum ad deliberationem de ipſis Johanne de Redinges & Edmundo & plenam & celerem juſtitiam inde faciend. ſecundum conſuetudinem predictam Et ideo vobis mandamus quod una cum ipſo Johanne Wogan ſine dilatione ad hoc intendatis Teſte meipſo apud Weſtm. 27° die Octob. anno regni noſtri ſexto.

Prætextu quorum mandatorum predicti ſeneſchallus & mareſchallus una cum predicto Johanne Wogan ad deliberationem de ipſis Johanne de Redinges & Edmundo proceſſerunt &c. Et predictus Johannes de Redinges venit & ſuper predicta controfactione privati ſigilli domini regis alias allocutus reſpondit ſicut prius dicens quod Edmundus de Mâlolacu dictum ſigillum cum quo ipſe predictas literas ſigillavit predicto die & anno & loco in preſentia domini regis & infra virgam ſuam ſibi liberavit pro quadringentis talentis auri ut predictum eſt Et deſicut predictus Johannes de Redinges aſſeruit ſe predictum ſigillum controfactum ex liberatione prefati Edmundi recipiſſe & habuiſſe & cum eo poſtea in abſentia ejuſdem Edmundi manu operaſſe quæſitum eſt ab eo ſi quam falſitatem aut ſedutionem in liberatione aut receptione vel manuopere predicti ſigilli ſcivit velcintellexit nec ne dicit quod non Rogatus qualiter ſe velit acquietare dicit quod per quicquid curia ſibi conſideraverit Et predictus Edmundus de Malolacu venit & defendit omnes ſedutiones & quicquid eſt contra pacem domini regis & coronam ſuam & bene defendit quod ſigillum domini regis nunquam controfecit nec aliquod ſigillum prefato Johanni de Redinges liberavit nec ab eo quadringenta talenta auri recepit nec ad ſedutionem predictam aſſentiens nec conſentiens extiterat ſicut idem Johannes cum accuſat & de hoc ponit ſe de bono & malo ſuper patriam Et predictus Johannes de Redinges ſimiliter &c. Ideo præceptum eſt mareſchallo quod venire faciat incontinenter coram predictis ſeneſchallo & mareſchallo & Johanne de Wogan duodecim milites de hoſpitio domini regis gladio cinctos propinquiores viſum de

Alkeberwe

Alkeberwe qui ibi in præſentia domini regis tunc præſentes fuerunt per quos rei veritas melius ſciri poterit & inquiri & qui predictum Johannem de Redinges accuſatorem & prefatum Edmundum de Malolacu defendentem nulla affinitate attingant ad recog. qui tam &c. quam &c. Qui vero jurati viz. Willelmus Juchet Willelmus de Ferrers Gilbertus Pecche Willelmus de Cheyny Gerardus Salveyn Johannes de Crepinge Humphridus de Littlebury Johannes de Eure Willelmus Darcy Johannes de caſtro Henricus de Appelby & Robertus Darcy milites de conſenſu partium electi veniunt & ſuper ſacramentum ſuum dicunt quod predictus Edmundus de premiſſis ſibi impoſitis in nullo eſt culpabilis &c. Dicunt tamen quod prefatus Johannes de Redinges predictum ſigillum ſeducioſe controfecit & cum eo manuoperabatur ut predictum eſt &c. Ideo conſideratum eſt quod predictus Edmundus eat inde quietus &c. Et quod predictus Johannes de Redinges pro predicta ſeducione ſit detractus & pro manuopere cum ſigillo predicto poſte ſuſpenſus &c.

Nos autem innocentiam ipſius Edmundi in hac parte attendentes nolumus quod idem Edmundus occaſione controfactionis predictæ per nos vel juſticiarios vicecomites ſeu alios miniſtros noſtros quoſcunque occaſionetur moleſtetur in aliquo ſeu gravetur In cujus &c. Teſte rege apud Wyndeſor octavo die Februarii.

In dorſo Patentium

De anno XVIII° Edw. II. p. ii. m. ii.

De inquirendo de malefactoribus in Fleetſtreete in ſuburbiis London. infra virgam regis & ubi H. P. per mareſchallum regis hoſpitatus fuit.

Secunda

Secunda pars Patentium
De anno X° Edw. II. m. vi.

REX remiſit Henrico G. & aliis hominibus de hundredo de Chatford in comitatu Eſſexiæ ſectam, quam egra eos fecit occaſione tranſgreſſionis & contemptus quos regi fecerint de hoſpitando et male tractando homines & equos regis qui in eodem comitatu per mareſchallum hoſpitii regis hoſpitati fuerunt.

Secunda pars Patentium
De anno XVI° Edw. II. m. ii.

REX voluit quod extractæ de finibus amerciamentis exitibus forisfacturis & omnibus aliis exitibus de placitis & querelis coram ſeneſchallo & mareſchallo hoſpitii regis placitatis ſingulis annis ad terminos ſancti Michaelis & Paſchæ ad Scaccarium ſuum plenarie liberentur.

Inter brevia regis.
In dorſo clauſ. anno XVIII° Edw. III. p. 1. ma.

EDWARDUS Dei gratia rex Angliæ & Franciæ & dominus Hiberniæ theſaurar. & baronibus ſuis de Scaccario ſalutem Volentes certis de cauſis certiorari tam de feodis quam de aliis quibuſcunque quæ pertinent ad officium comitis mareſcalli & mariſcalciæ Angliæ tam in Scaccario noſtro et aliis placeis noſtris & in hoſpitio noſtro quam alibi in Angliæ ſive extra tam guerræ tam pacis temporibus ac de terris & redditibus quæ ſimiliter ad officium pertinent antedictum nec non de ſervitiis & aliis quæ mareſcalli hujuſmodi nobis tenentur facere & progenitoribus noſtris facere conſueverunt & quæ nos & alii dicto mariſcallo tenemur facere & debemus & dicti progenitores noſtri ei hactenus facere ſolebant de jure vel conſuetudine ratione officio memorati vobis mandamus quod ſcrutatis rotulis libris & memorandis

memorandis ejuſdem Scaccarii & in eo reſidentibus quæ premiſſa contingunt nos de eo quod inde inveniritis reddates ſub ſigillo dicti Scaccarii diſtincte & aperte citra diem Martis proxime futurum certiores hoc breve nobis remittentes Teſte meipſo apud Weſtm. xiii die Aprilis anno regni noſtri Angliæ decimo octavo regni noſtri Franciæ quinto.

Irrotulatur termino Paſchæ Anno XVIII. Edw. III. Ro. iii.

Certificatio ſuper contentis in hoc mandato patet in quadam ſchedula conſuta.

Scrutatis libris & memorandis Scaccarii ſuper contentis in hoc mandato compertum eſt in quadam conſtitutione de domo regis antiquitus facta annotari ſic.

Henricus de la Pomeray ſi extra domum comederit duos ſolidos in die & unum ſimenellum ſal. & unum ſextarium vini expenſ. & unum cereolum & viginti quatuor fruſtra candel. ſi autem intra quatuordecim denarios & dim. ſextar. vini & candel. plenarie Magiſter mariſcallus ſimiliter & præter hæc debet habere dicas de donis & liberationibus quæ fuerint de theſauro regis & de ſua camera & debet habere dicas contra omnes officiales regis ut teſtis per omnia Quatuor mareſcalli qui ſerviunt familiæ regis tam clericis quam militibus quam etiam miniſtris die qua faciunt herbergeriam vel extra curiam morantur in negotio regis octo denarios in die & unum gallon vini expenſ. & duodecim fruſtra candel. ſi intra tres denarios in die hominibus ſuis in die & candel. plenarie Quod ſi aliquis mareſcallorum miſſus fuit in negotio regis octo denarios tantum Servientes mariſcallorum ſi miſſi in negotio fuerint regis unuſquiſque tres denarios in die ſin autem in domo regis comedentur.

Item in Rubro libro Scaccarii in quo annotatur qualiter officiarii & miniſteriales regis ſervierunt & quid ad eorum pertinuit officium die coronationis Alienoræ quondam reginæ Angliæ uxoris regis Henrici filii Johannis regis continetur ſic.

De officio mariſcalciæ ſervivit Gilbertus Mariſcallus comes de Strigul cujus eſt officium tumultus ſedare in domo regis liberationes in hoſpitio facere oſtia aulæ regis cuſtodire Recipit autem de quolibet barone facto milite a rege & quolibet comite eo die palefridum cum ſella.

Item mareſcallus in ſcaccario cujus ad curam inter alia pertinet tallias debitorum quas vicecomes reddideret & quæ annotantur in rotulo mittere ſeorſim in forulo ſuo & debitores non ſatisfacientes de ſummonitione qui meruerint ſervare & ſoluto Scaccario die ſi voluerit in carcerem mittere cuſtodiæ publicæ non tamen in vinculis Percipit ex antiqua conſuetudine de ſingulis hujuſmodi debitoribus dum in cuſtodia ſua fuerint quolibet die dimidiam marcam De hiis quæ pertinent ad officium mareſcalli aliud penes Scaccarium non comperimus.

Ex rotulo parliamenti

Apud Weſtm. in Octabis ſancti Johannis Baptiſte anno XXX° Edwardi primi Rot. 2. in dorſo.

ITEM ad parliamentum predictum per ipſum dominum regem conceſſum fuit & præceptum quod illa conceſſio ſua firmiter obſervaretur videlicet quod cum coram ſeneſcallo ipſius domini regis & mareſcallo &c. ipſo domino rege apud London. ſeu Weſtm. aut alibi prope civitatem predictam exiſtente inquiſitiones aliquæ fieri debeant ſuper tranſgreſſionibus aut aliis intra civitatem predictam factis inter aliquos de civitate predicta tantum aut inter ipſos & alios forinſecos conjunctim aut inter aliquem de hoſpitio domini regis & alium de civitate predicta ſeu alium forinſecum quemcunque & de quibus tranſgreſſionibus vel aliis ad eoſdem ſeneſcallum & mareſcallos ratione virgæ cognitio pertineat quod omnes illæ inquiſitiones infra civitatem predictam capiantur & non alibi quanquam partes inquiſitionum illarum extra civitatem illam coram ſeneſcallo & mareſcallo placitaverint & ſe in inquiſitionem patriæ poſuerint dummodo aliqui juratores inquiſitionis illius de civitate predicta fuerint & infra eandem commorantes.

Et hoc conceſſit dominus rex in favorem pauperum operariorum ejuſdem civivatis qui de operibus manuum ſuarum vivunt ne victu ſuo carerent aut plus depauperarentur.

Reaſons that the Court of Marſhalſy may be fittly enabled in certain Caſes to hold Plea of all Manner of Treſpaſſes, as well upon the Caſe as others, albeit, neither Party be of the King's houſehold.

I. BECAUSE the juriſdiction at the common law was incertaine, and the ſtatute made to bring it into certainety is as uncertaine; yet it ſeemes by good opinion in the law, and inferences upon divers ſtatutes, viz. 28 Edward 1. articuli ſuper chartas cap. 3. le preamble del ſtatut de 3 Edward 1. cited in Coke lib. 6. fol. 20. 5 Edward 3 cap. 2. & 33 Henry 8. cap. 12. that this court may hold plea of all manner of treſpaſſes, albeit neither party be of the king's houſe; howbeit this is controverted by great opinions in law, and become a caſe of great doubt and difficulty; for taking away of which doubt this graunt is prayed.

II. Becauſe common uſage, and the continuall practice of the court have been ever ſince the making of the ſtatute unto this day, to hold plea of all manner of treſpaſſes upon the caſe, and others between partyes not of the houſehold, and actions of debt as aforeſayd, and this approved by infinite precedents moſt auncient.

III. Becauſe it is as indifferent for the ſtate, that this court ſhould continue ſuch uſage and practice, as that every other inferiour liberty ſhould; and all other libertyes doe; yea, this court is more neceſſary for the publick weale of this ſtate than any inferiour court; for herein the reſiants within the verge have a moſt ſpeedy triall for their cauſes in foure court days, and ſpeciall bayle in every ſmall action, and with the ſmall charge of forty ſhillings att the moſt, for the whole charge of tryall of a cauſe.

IV. Alſo by the king's royall prerogative for himſelfe and the officers of his majeſty's court, the officers of this court have power to enter all libertyes and priviledged places: and whereas in every liberty there is but one bayliffe who may be corrupted to favour bankrupts, and evill perſons there lurking, the officers of this court ſtill meete with them, to the great benefitt of many poore creditours, who otherwiſe would be defeated of their juſt debts and dammages.

V. Becauſe to overthrow ſuch auncient uſage and practice is miſcheivous to infinite ſubjects; for if all the judgements in the ſayd court, in ſuch caſes and actions, where neither party hath bin of the king's houſehold, ſhould be be reverſed, the partyes are infinite which have many yeares ſynce recovered their juſt dammages, and who ſhould be thereupon enforced to reſtore backe the ſame, and now would be without all remedy to recover them againe by new ſuite, by reaſon of death of wittneſſes or death of partyes defendants with whom ſuch perſonall actions dye.

VI. Becauſe hereupon would enſue infinite ſuites againſt all the officers of the ſayd court, as every man in ſuch caſe might have an action upon the ſtatute againſt the ſteward and marſhall for every ſuch action which they held to plea of, and alſo againſt the partyes which brought ſuites there, which are infinite, and againſt every officer which arreſted any upon ſuch action, or ſerved any execution in ſuch caſes; which alſo are infinite.

VII. Becauſe hereupon muſt enſue the utter ſubverſion of that auncient court, which is as auncient and of as high record as any court in this realme, and of thoſe auncient and neceſſary offices of ſtate ordeyned for the peace of the king's houſe, viz, the marſhall of the king's houſe and ſteward of the marſhalcy of the ſame; for thoſe officers following the court to their great charge, the recompence of their ſervice growing merely out of auncient fees due to them upon ſuites before them, and almoſt all thoſe ſuites

between partyes not of the houſehold, thoſe ſuites abrogated, they muſt either have ſupply out of the king's coffers, or elſe will be enforced for want of ſupply of their charge in their places, to ſurrender their offices; for as yet they have never had any annuall penſion or fee of the king in reſpect of their offices.

VIII. This caſe requireth ſpeedy redreſs, the miſcheife being now growne to ſoe great extremity, by reaſon that this auncient queſtion of the juriſdiction of this court hath bin much more ſtirred of late then ever heretofore, for the writts of errour now brought and founded upon this doubt are exceeding many, twenty at leaſt in a ſhort tyme; the actions upon the ſtatute and of falſe impriſonment againſt the plaintiffs ſuitours there, and the officers of that court, now depending full as many, and tend to the utter undoeing of many of them: the lives of the inferiour officers are likewiſe every day in great hazard, by reaſon of reſcues made upon them in the execution of their offices.

Rot. Clauſ. de anno XXIII° Edw. III. p. 1. m. 5.

REX theſaurario & baronibus ſuis de Scaccario ſalutem Cum in ſecundo ſtatuto apud Weſtm. anno regni domini Edwardi quondam regis Angliæ avi noſtri decimo tertio edito ſic continetur De mareſcallo ſuo de feodo camerariis cuſtodibus oſtiorum in itinere juſtitiariorum & ſervientibus virgam portantibus coram juſtitiariis apud Weſtm. qui officium illud de feodo & qui plus exigunt ratione fidei ſuæ quam exigere conſueverunt ſecundum quod multi quæruntur per eos qui ſtatum curiæ a multo tempore viderunt & ſciunt dominus rex inquiri fecit quem ſtatum predicti miniſtri de feodo habere conſueverunt temporibus retroactis & per inquiſitionem illam ſtatuit & præcepit quod mareſcallus de feodo de novo exigit Palefridum de comitibus & baronibus & aliis per partem baroniæ tenentibus quando homagium fecerint & nihilominus ad militiam eorum alium Palefridum & de quibuſdam de quibus Palefridum habere

non

non debuit Palefridum de novo exigit ordinavit quod prediƈtus mareſchallus de quolibet comite & barone integram baroniam tenente de uno Palefrido ſit contentus vel de preƈio quale antequitus percipere conſuevit Item quod ſi ad homagium quod fecit Palefridum vel pretium in forma prediƈta ceperit ad militiam ſuam nihil capiat & ſi forte ad homagium nihil ceperit ad militiam de abbatibus & prioribus integram baroniam tenentibus cum homagium aut fidelitatem fecerint pro baroniis ſuis capiat Palefridum vel pretium ut prediƈtum eſt Hoc idem de archiepiſcopis & epiſcopis obſervandum eſt de hiis autem qui partem baroniæ tenent ſive ſint religioſi ſive ſeculares capiat ſecundum portionem partis baroniæ quam tenent De religioſis tenentibus in liberam eleemoſynam & non per baroniam vel partem baroniæ nihil de cetero exigat mareſcallus Et conceſſit dominus rex quod per hoc ſtatutum non præcludatur mareſcallus ſuus de feodo in in plus petendo ſi impoſterum oſtendere poterit quod jus habeat plus petendi prout in ſtatuto prediƈto plenius continetur Ac jam intellexerimus quod nonnulli tam epiſcopi abbates & priores quam comites barones & alii qui homagia & fidelitates nobis pro terris & tenementis quæ de nobis per baroniam & partem baroniæ tenent hujuſmodi feoda mareſcallo non ſolverunt nec ſolvere intendunt quod ſi permittitur in noſtri & coronæ noſtræ præjudicium & exhæreditationem cedere dinoſcitur manifeſte Nos hujuſmodi præjudicio & exhereditationi in quantum poterimus præcavere & jura coronæ noſtræ noſtris temporibus manutenere volentes ut tenemus vos mandamus quod viſis nominibus prælatorum comitum baronum militum religioſorum & aliorum qui nobis homagiæ & fidelitates pro terris & tenementis quæ de nobis tenent fecerunt in quadam ſchedula quam vobis mittimus ſub pede ſigilli noſtri contentorum eoſdem prælatos comites barones milites religioſos & alios quos per ſcrutinium rotulorum & memorandorum Scaccarii prediƈti aut alio modo legitimo vobis conſtare poterit de nobis per baroniam vel partem baroniæ tenere & feodum illud non ſolviſſe quod ad nos eo quod feodum illud

illud per mortem Thomæ nuper comitis Norffolciæ & mareſcalli Angliæ ad manus noſtras devenit pertinet ſolvendum diſtringi & feodum illud ab iis ad opus noſtrum levari faciatis prout de jure & ſecundum formam ſtatuti predicti fuerit faciendum Teſte rege apud Woodſtock xix° die Maij.

Originale

De anno XXXIIII° Edw. III^tii Rot. 16.

REX dilecto ſibi Henrico Traynell ſalutem Sciatis quod commiſſimus vobis officium clerici mareſcalciæ hoſpitii chariſſimi filii noſtri Thomæ de Woodſtocke cuſtodis Angliæ in manu noſtra per mortem Rogeri de Mortuomari nuper comitis March et mareſcalli Angliæ exiſtent. infra procinctum duodecim leucarum in circuitu hoſpitii ejuſdem cuſtodis una cum feneſcallo hoſpitii predicti vel ejuſdem ſeneſcalli locum tenente & aliis fidelibus noſtris quos per literas noſtras patentes ad diverſas felonias & tranſgreſſiones & alia malefacta infra procinctum predictum audiend. & terminand. aſſignavimus faciend. & exercend. In cujus rei teſtimonium &c quamdiu bene placuerit duratur Teſte cuſtode predicto apud Weſtm. xx° die Aprilis.

IBIDEM.

REX dilecto ſibi Johanni de Lutterworth ſalutem. Scias quod commiſſimus tibi cuſtodiam priſonæ mariſcalciæ hoſpitii chariſſimi filii Thomæ de Woodſtock cuſtodis Angliæ in manu noſtra per mortem Rogeri de Mortuomari nuper comitis March.—& mareſcalli Angliæ exiſtent. Ita quod ſecuritatem coram ſeneſcallo hoſpitii predicti vel ejuſdem ſeneſcalli locum tenente invenias de reſpondendo fideliter de omni eo quod ad cuſtodiam predictam pertinet ubi & quando debeas ut eſt juſtum & fieri conſuetum In cujus &c. quamdiu regi placuerit duratur Teſte ut ſupra.

IBI-

IBIDEM.

REX dilecto ſibi Johanni de Knighton ſalutem Scias quod commiſſimus tibi officium ſervientis mariſcalli in mariſcalcia hoſpitii chariſſimi filii noſtri Thomæ de Woodſtock cuſtodis Angliæ in manu noſtra per mortem Rogeri de Mortuomari nuper comitis March & mareſcalli Angliæ exiſtent. infra procinctum duodecim leucarum in circuitu hoſpitii ejuſdem cuſtodis una cum ſeneſcallo hoſpitii predicti vel ejuſdem ſeneſcalli locum tenente & aliis quos per literas noſtras patentes ad diverſas felonias & tranſgreſſiones & alia malefacta infra procinctum predictum audiend. & terminand. aſſignaverimus faciendum & exercendum In cujus &c. quamdiu regi placuerit duratur &c. Teſte ut ſupra.

De querela inter Edward le Deſpencer & Radulphum Baſſet audiend. &c. ſup. exacc. &c. priſonarij.

Rot. patent. anno XLVIII° Edw. III. in dorſo. p. 2. m. 20.

REX dilectis & fidelibus ſuis Guidoni de Brien & Richardo de Stafford ſalutem Sciatis quod cum officium conſtabularii Angliæ per mortem Humfridi de Bohun nuper comitis Herefordiæ & Eſſexiæ qui illud de nobis tenuit in capite & ratione minoris ætatis hæredum ipſius comitis ad manus noſtras jam devenerit & Thomas Moore per petitionem ſuam nobis ſupplicaverit ſibi juſtitiam ſuper exaccione ſua cujuſdam priſonarii contra ipſum predictum & fidelem noſtrum Radulphum Baſſet ut dicitur injuſte detenti exhibere Nos volentes in hac parte fieri quod eſt juſtum & de fidelitate veſtra plenius confidentes committimus vobis & alteri veſtrum vices hujuſmodi conſtabularii ad querelam ipſius Thomæ in hac parte una cum dilecto & fideli noſtro Edmundo de Mortuomari mareſcallo Angliæ vel ejus in hac parte deputat. audiend. & omnia alia quæ ad officium hujuſmodi conſtabularii pertinent hac vice faciend. & explend. ſecundum legem & conſuetudinem armorum

armorum & ideo vobis & alteri veſtrum mandamus quod circa premiſſa una cum prefato mareſcallo vel ejus deputat. faciend. & explend. intendatis in forma predicta. Damus etiam ducibus comitibus vicecomitibus baronibus juſticiariis majoribus ballivis miniſtris & omnibus aliis fidelibus noſtras tam infra libertates quam extra tenore preſentium in mandatis quod vobis & alteri veſtrum in premiſſis faciend. & exequend. ſicut predictum eſt intendentes conſulentes reſpondentes & auxilientes ſint quociens & prout per vos fuerint ſuper hoc præmuniti ex parte noſtra In cujus &c. Teſte rege apud Weſtm. x° die Octobris.

Per conſilium.

Pro Ivone Beſtent.

Eodem anno in dorſo.

REX dilectis & fidelibus ſuis Guidoni de Brien & Ricardo de Stafford. Sciatis quod cum officium conſtabularii Angliæ per mortem Humfridi de Bohun nuper comitis Hertfordiæ & Eſſexiæ qui illud de nobis tenuit in capite e ratione minoris ætatis hæredum ipſius comitis ad manus noſtras jam devenerit & jam Ivo Beſtent de Britannia armiger per petitionem ſuam nobis ſupplicaverit ſibi juſtitiam exhiberi ſuper exaccione ſua cujuſdam Henrici de la Hay chevalier priſonarii ipſius Ivonis ut dicitur Nos ſupplicatione predictæ quatenus juſtum fueret annuentes & de fidelitate veſtra plenius confitentes committimus vobis & alteri veſtrum vices hujuſmodi conſtabularii ad querelam ipſius Ivonis in hac parte nna cum dilecto & fideli noſtro Edmundo de Mortuomari comite March & mareſcallo Angliæ vel ejus in hac parte deput. audiend. & omnia alia quæ ad officium hujuſmodi conſtabularii pertinent hac vice faciend. & explend. ſecundum legem & conſuetudinem armorum Et ideo vobis & alteri veſtrum mandamus quod circa premiſſa una cum prefato mariſcallo vel ejus deputat. faciend. & explend. intendatis in forma predicta. Damus autem ducibus comitibus baronibus juſtitiariis vicecomitibus majoribus ballivis miniſtris

miniſtris & omnibus aliis fidelibus noſtris tam infra libertates quam extra tenore preſentium in mandatis quod vobis & alteri veſtrorum in premiſſis faciend. & exequend. ſicut predictum eſt intendentes ſint conſulentes reſpondentes & auxiliantes quociens & prout per vos vel alterum veſtrorum fuerint ſuper hoc præmuniti ex parte noſtra in cujus, &c. Teſte rege apud Weſtm. xxviii° die Octobris.

Per ipſum regem & conſilium.

OFICIUM mareſchalſiæ Angliæ cum pertinentibus conceſſit Willielmo de Monteacuto comiti Herfordiæ à tempore mortis Thomæ nuper comitis Nortfolciæ & mariſcalli Angliæ avunculi regis ad totam vitam ipſius comitis Herfordiæ 3 ps. pat. anno 12° Edw. 3. m. 7 & 1ª ps. pat. anno 18° Edw. 3. m. 18.

Thomas de Bellocampo comes Warwic. conſtituitur mariſcallus Angliæ quamdiu &c.

De Feodis pro officio mariſcalli Angliæ in Hybernia colligendis 1ª ps pat. anno 27° Edw. 3. ma. 13ª.

Thomas de Bello Campo comes Warwic. habet officium mariſcalli Angliæ quamdiu &c. 2ª ps. pat. anno 40 Edw. 3. ma. 16

John de Arundell mariſcallus Angliæ 2ª ps. pat. anno 2° Rich. 2. ma. 40ª & 1ª ps. pat. anno 3 ma. 7ª.

Radulphus Nevill habet officium mariſcalli Angliæ ad vitam 1ª ps. pat. anno 1° Hen. 4. m. 15 & 32. & vide annum 6 pt. 1. m. 30.

Johannes comes Huntington durante minore ætate Johannis filii & hæredis Johannis ducis Norfolk 1 ps. pat. anno 11 Hen. 6. m. 20.

De Mariſcallo Angl. conſtitut.

Pat. anno 3° Rich. 2. ps. 3. m. 18.

REX omnibus ad quos &c ſalutem Sciatis quod conſtituimus cariſſimum fratrem noſtrum Thomam de Holland mareſcallum noſtrum Angliæ capiend. in eodem officio feoda & proficua ad idem officium ſpectantia volentes quod

ipſe officium illud & quicquid ad illud pertinet per ſe & ſuos deputatos idoneos debite gubernare & exercere poſſit quamdiu in officio ſteterit ſupradicto in cujus &c. Teſte rege apud Weſtm. xiij° die Marcii.

Per breve de privato ſigillo.

Pat. anno 4t° Rich. 2. p. 1. m. 3.

REX omnibus ad quos &c ſalutem Inſpeximus literas patentes quas chariſſimus frater noſter Thomas de Holland mariſcallus Angliæ fecit dilecto nobis Johanni Draiton armigero ſuo in hæc verba. " Sachent tous que ceſtes let-
" tres verront ou orront nous Thomas de Holland ma-
" reſhall d'Angleterre avoir done & graunte a noſtre che-
" valier & byen amies eſquier Johan Draiton les offices
" de ſerjeant marſhall and clerke marſhall en la marſhallſey
" del oſtel noſtre ſuvereigne le roy enſemblement ou touz
" maneres fees meinpriſes & profits touchants les ditz
" offices donans & grantans au dit Johan Plein poiar a
" faire acquitances a tous iceux as queux acquitance appar-
" tient touchants les dits offices & de remure tous les
" officers touchant meſne l'office a ſa volonte & mettre
" autres in leur lieus eyants ferme & eſtablie quant que
" le dit Johan fera en les dits offices a avoir & tenir les
" dits offices au dit Johan pur le tempts que nous ſerons
" mareſchall d'Angleterre En teſtmoignance de quell
" choſe a yceſtes nos lettres patents avons fait mettre noſtre
" ſeale don a Kenington le vint teirce de Feverer l'an du
" reigne noſter ſignor le roy Richard ſecunde puis le
" conqueſt tierce." Nos autem dictas donacionem & conceſſionem predicti fratris noſtri ratas habentes & gratas eas pro nobis & hæredibus noſtris quantum in nobis eſt approbamus ratificamus & tenore preſentium confirmamus prout literæ predictæ plenius teſtantur volentes inſuper & concedentes quantum in nobis eſt prefato Johanni quod ipſe predicta officia cum omnibus feodis & proficuis eiſdem officiis pertinentibus habeat & teneat ad totam vitam ſuam in cujus &c. Teſte rege apud Northampton quinto die Decembris.

Per breve de privato ſigillo.

N° XXVI.

N° XXVI.

Of the Antiquity of the Chriſtian Religion in this Iſland.

By Sir ROBERT COTTON.

Nov. 29th 1604.

CONSENT of all authors and pregnant circumſtances manifeſt, that Auſtyn the monk had not a general converſion as the end of his employment, but the general reformation of the whole church government; and therefore is he in the inſtruments of his particular ſervice ſtiled, *doctor Anglorum*, and ſometimes, *apoſtolus Anglicæ gentis*, as appeareth by Malmſbury, in regard that to the Saxons or Angles only he was ſent convertor: but in his bulls of juriſdiction, his general end, he is uſually called *Primus Britanniarum*, in that he was appointed, and had the entire order given to him for the whole. For Chriſtianity, although blemiſhed by the Saxon's barbariſme, which this apoſtell cleered, or by the Pelagian hereſie, the ſeed of our countryman *Pelagius* or *Morgan*, for ſo the word importeth, for remove whereof the reverend fathers *Germanus* and *Severus* were called hether from France by our Britiſh churches, did notwithſtanding in ſucceſſion continue, and aſcend unto the times next to Chriſt's paſſion, the which after I have layed downe the ſtate of this church, as here found and eſtabliſhed by this monk, I will raiſe upp as the propper being of this queſtion. Beda noteth, that in the ſynod held at Auſtyn's oake, there were ſeven old Britiſh biſhops called to conſultation, who in poynts of ſubſtance did not vary from the church of Rome, but in ceremony, followed that of the Greekes; from whence our conjectures may lead as to the firſt planting of Chriſtianity here, for after their forme and times did we celebrate the feaſt of Eaſter; and in memory of the mother churches of Aſia, which

were ſeven, as Bernardus Clarivalentius ſaith, the monaſtery of Bangor did diſtribute their monks into ſeven portions, everie one numbering 300 ſoules. And pope Gregory in his decretalls ordeineth *contra epiſcopos Scotorum vel Brittannorum*, the uſe of chriſme and euchariſt, *ante confeſſi fuerint, ſe nobiſcum eſſe in unitate eccleſiæ.* Whereby we may collect that not ſo much in ground, as faſchion was their deſcent; in which laſt, at the firſt he was not ſo ſtrickt, for to the queſtion of this ſaint Auſtyn touching the ceremony ſervice, he anſwered, *Novit fraternitas tua Romanæ eccleſiæ conſuetudinem, ſed mihi placet, ſive in Romana, ſive in Galliarum, ſive in qualibet alia eccleſia aliquid inveniſti, quod plus Omnipotenti Deo poſſit placere, ſolicite eligas, et Anglorum eccleſiæ infundas:* thus farr of the religion here by him found. The next is the juriſdiction by him and his followers eſtabliſhed and practiſed, their commiſſion extending over the whole, as entire, as it is now one body, of which I will under favor ſpeake a little, in profe that the Scottiſh nations are under the ſea of Canterbury: to confirme this, there is no ſtronger argument then can be drawen from the firſt inſtitution and continued practice, which is evident in the firſt letter of pope Gregory, in which, after the ſubordinate juriſdiction of the churches of London and Yorke limited, he ſaith to Auſtyn the archbiſhop, *Tua vero fraternitas non ſolum eos epiſcopos quos ordinaverit*, meaning the biſhop of London, &c. *neque hos tantummodo qui per Eboraci epiſcopum ordinati ſunt ſed etiam omnes Britanniæ ſacerdotes.* And in the anſwer to the queſtion tendered by the ſame monke, he ſaith, *in Galliarum epiſcopis nullam tibi authoritatem tribuimus. Britanniarum vero omnes epiſcopos tuæ fraternitati committimus, ut indocti doceantur, infirmi roborentur, perverſi corrigantur*, uſing *Britanniarum* in the plurall number, that it might include Scotland, and all the Weſtern Iſles, to which by ancient and beſt authors that name was common. This Beda in his third book expounded thus; *Omnes nationes et provincias Britanniæ quæ in quatuor linguas Brittonum, Pictorum, Scotorum, & Anglorum diviſæ ſunt, in ditionem*

Oſwaldus

Oſwaldus accepit; and the ſame author ſpeaking of Laurentius ſucceſſor of Auſtyn ſayth, *Non ſolum novæ, quæ de Anglis collecta erat eccleſiæ, curam gerebat, ſed & veterum Britanniæ incolarum, nec non & Scotorum, qui Hiberniam inſulæ Brittanniæ proximam populis paſtoralem impendere ſolicitudinem curabat.* And to Theodorus that ruled that ſee in the year 688, the letter of juriſdiction from Vitellianus is, *omnes eccleſias tuæ ſanctitati in inſula Britanniæ poſitas commendavi.* And thus it continued untill the time of Lanfranc ſince the conqueſt, as appeareth by his letter to pope Alexander: and in regard of ſuch intire rule due to that ſee was his ſucceſſor Anſelme placed in the councell of Clarimont *tanquam alterius orbis pontifex Maximus*, alluding to the phraſe of the poet, wherein this whole Iſle is called *alter orbis*. Thus farr for the ſtate and deſcent of religion from the time of the firſt eſtabliſhment of the ſee of Canterbury which I make my firſt branch, whereuppon I will raiſe by degrees the ſtate of our Chriſtianity to its infancy.

That we had a profeſſion of Chriſt, at and before the landing of our laſt reſtorer Auſtyn, the ſeven biſhops here found, the church erected in honor of ſaint Martyn, in the ages long forgone, where he firſt chriſtened, and the godly monaſtery of Bangor, the mother of all others in the world, as Clarivalentius ſaith, may aſſure ſuch unincorrupted aſcent. Near thoſe times preceded Arthur, one of the nine, but firſt of chriſtian worthies, whoſe enſigne was the ſigne of the virgin mother, as Vincentius noteth in his *ſpeculo hiſtoricali*, which ſo often ſucceſsfully he advanced for Chriſt and his country's liberty againſt the the pagan Saxons who had ſo much defaced both. The calamity of the church about thoſe times, Gildas doth ſo paſſionately bewaile, that ſucceeding times have adapted to him the epitaph of Gyldas Querulus. About the yeare 470 was a provinciall councell held for the reforming of religion, and repayring of the decayed churches which the Pagan marriage of Vortigern had cauſed, to the great miſlike of the people, a pregnant ſigne of the continuyng zeale, which

which unto thoſe days had left a glorious memory: In the year 450 was Faſtidius a Brittane biſhop renowned for his booke *de vita Chriſtiana & de viduitate ſervanda*, full, as Gennadius ſaith, *ſanæ doctrinæ*. At the councell of Ariminum, a little afore, we had three biſhops, as Sulpitius Servius teſtifieth: Reſtitutus a biſhop of London did ſubſcribe the councell of Arles anno 335. At the councells of Sardis and Nice in the time of great Conſtantin the firſt chriſtian emperor, and this countryman, whoſe bleſſed days gave free way, firſt to that profeſſion, to the councells authority, to the pope dignity, and to the whole world peace, had we our biſhops preſent, whoſe forwardneſs againſt the Arrians hereſies Athanaſius advanceth in his apology *contra Arrianos*, and Hillarius *in epiſtola ad epiſtolas*. The next ſtep of our teſtimony falleth in the laſt perſecution by Diocleſian, when Albon was made our protomartyr; a ſtrong argument of free profeſſion, ſince from our firſt converſion no blood was ever drawen of any chriſtian here: from hence by the injury of time and tyrants we muſt make a wider ſtep from Diocleſian to Severus, of whoſe times Tertulian writting ſaith, that *Britanniæ inacceſſa Romanis loca, Chriſto vero ſubdita*, whereby he muſt intend Scotland beyond the walls, whereto the Romans had ſett their limits. Then paſſing over the doubtfull relation of our ſaint Urſula, her 1100 Virgins, and ſaint Emerita ſiſter to our Lucius, we come to him who lived under the emperor Commodus, and the firſt king of all Europe chriſtened, of whoſe colledge of divine philoſophy erected at Bangor, the monke of Clarivall ſaith *a fide Chriſti nunquam receſſerunt*. Againſt this chriſtian king ſome have oppoſed arguments, partly from defect of authority, ſome from circumſtance, grounding the laſt uppon conjecture, that the emperors reducing the provinces did roote out allways the native ſouveraines: to this may be anſwered, that after this time, Xephilin the contractor of Dion the Roman hiſtorian, noteth Attaxoxas a king in this iſland, with whom Julia Donna, Severus's wife, had conference, as Tacitus, of this country ſaith, that the Romans did ſtill continue king's

inſtru-

inſtrumenta ſervitutis. For antiquity there can be no better than that of Beda, Anaſtacius Bibliothecarius, and the old original martirology, a monument of a thouſand yeares. Next we muſt paſſe to Claudia Ruffina whom ſaint Paul commended, and Martiall the epigrammiſt praiſeth for her witt and beauty: to which in part, the author of the three converſions ſeemeth to oppoſe as an impoſſibility, not well adviſing, that from the laſt of Nero, when Sylvanus and Otho were conſuls, and in which yeare ſaint Paul was crucified, unto the raigne of Domitian, wherein the poet lived, will hardly reach twenty-four yeares, which time without much doubt ſhe might ſurvive. The next in order will be Ariſtobulus under the emperor Claudius, one of the 70 deacons mentioned in the epiſtle to the Romans, and by Dorotheus an author living under great Conſtantin, placed *epiſcopus Britanniarum.* That Simon the apoſtle was here a biſhop, Metaphraſtis is the auctor; as Sophronius of ſaint Paul's preaching here and in France: and that Joſeph, who gave to Chriſt a buriall, after his ſucceſsfull preaching here, found at Glaſſenbury his owne ſepulcher, is well avouched by Malmsbury in his antiquities *Glaſconienſis cœnobii,* as alſo by Baronius in his laborious worke of the church ſtory. Laſtly the moſt ſkillfull druides, peculiarly ours, whoſe doctrine of the ſoules immortalitie as all auctors confeſſe, and of a Virgin's conception, propheſying, as Portellus doth out of ſome auctors enforce; ripned, as Origin ſayth, Britannia the firſt fruite of God's harveſt; which hath been a ſoyle ſo gratefull ſince, that Polydor Virgill a ſtranger maketh it *parens & altrix omnium totius Europæ monaſteriorum.* Merr in his annals of Flanders confeſſeth, *Nulla ex gente plures divos divaſque quam ex Anglia incolæ erga ſanctos indigentes maxime liberales,* as ſaith the chronicle *Warſonenſis cenobij.* Our blood roiall exceeding all other countrys in martyrs and confeſſors. And *nuſquam gentium tot ſanctorum illibata corpora, quot in Anglia;* Vincentius remembreth in his 25th book. The Nederlanders were from hence converted, as teſtifieth the ſtory of Swithbertus, Burgundy by our Columbanus, as Sigiſbert,

bert, Scotland by Brandanus, as Bernard the French monk, Suedia by Gallus, as Petrus de Xutalibus, and Friſia by Wolfred, as is recorded by Matthew the monk of Weſtminſter. Thus farr of our chriſtianity, continuance, and antiquity.

N° XXVII.

Of the ſame.

By Mr. AGARDE.

Nov. 29, 1604.

ALTHOUGH this propoſition of itſelfe be more proper to be dilated by dyvines than by any other, yet becauſe I would bring ſome thynge to the encreaſe of oure buildinge, I hope that it ſhal be taken in good parte whatſoever I ſhall produce out of auncyent manuſcript Engliſhe auĉthours, they beinge the bookes wherein I have for many late yeares togeather trayvelled for many ſpeciall matters, whereby I might in my place be the more ready to ſatisfy the deſires of ſuch as delited in antiquities. Soe keepinge my ſelf within the lyſtes of the articles agreed on at our firſt aſſemblies, whereof this was one [that as neere as might be, thee moſte proufes of our queſtions ſhould be produced from our home writers, evidences, lawes, and deedes, and not from forreyners and ſtraungers ignorant of the ſtate and government of oure country] of ſuch thinges as I have collecĉted before the time Mr. Savell publiſhed oure Engliſhe hiſtriographers, out of many of which, and others, beinge then auncyent manuſcripts, I ſelecĉted ſome ſuch remembraunces as I thought fytt for mine inſtruction, I will nowe, *nudo rudi & agreſti ſtilo*, proceed to the matter. Mr. Robert Hare, that worthy antiquary, lent mee a large booke of St. Auguſtines of Canterbury, wherein was a full ſtory of our iſland wrote about H. the 5. his time, *anno domini*

1406, where he ſaith that that which he writeth, he collected out of Bede, Ceſtrenſis, Sprot, *& ex aliis ſcriptoribus illius monaſterii.* Theſe are his Wordes in his 13th leaf: *Lucius primus rex Chriſtianus regni iſtius ſub anno domini* 167, *qui fuit annus* 438 *ante adventum Auguſtini. Qui Lucius diviſit regnum in tres archiepiſcopatus, ſ.ilicet London, Ebor. & civitat. legionum id eſt Weſtceſtre.* To this agreeth a booke very auncient, which I have here to ſhewe of the antiquity of the archbuſhops of Yorke, with a catalogue of theire names made in verſe, his wordes are theſe: *Ritus phanaticus perduravit in Eborac. per* 1200 *annos, id eſt ad annos* 262 *poſt Incarnationem Domini noſtri Jeſu Chriſti uſque ad tempus Lucii Britonum regis illuſtris.* And then he proceedeth to ſhew howe Lucius ſent to Eleutherius the pope to have ſome from him to inſtruct him and his people, which Eleutherius accordingly ſent two doctors Faganus and Damianus, by whom idolatryre was put downe, and in the place of flammins and archiflammins appointed buſhops and archbuſhops at the places aforenamed, making Faganus archebuſhope of Yorke, where the Chriſtian Religion continued untyl th' extirpinge of Britains out of the north by the Angles and Saxons, who were then noe Chriſtians but Pagans, which was a clii. years after Lucius time. To this agreeth the regiſter I have of Elye. Mark, thoſe auctors affirme, that Lucius was the firſt kinge that openlye profeſſed the Chriſtian Religion here; yet I have read in an old regiſter of Glaſtonbury of the beginninge, progreſſe, and encreaſe of that houſe, where yt is mentioned that Joſeph of Arymathea came many yeares before, ymmediately after the death of Chriſt, into this iland, and firſt preached Chriſt at and aboute Glaſtonbury neere to Welles. To this agreeth the teſtimony of Pollidore Virgill (who peruſed the moſt of oure antiquities of England, dwellinge amongeſt us) his wordes are theſe: *Hæc omnino chriſtianæ pietatis in Britannia extitere primordia quam deinde Lucius rex accendit & adauxit*, &c. Yea, and I have read, that Patrick the canonyzed Saynt of Ireland did long before Lucius's time preache the Goſpel in Wales, and many other places, and

converted much people. Soe as the Chriſtian Religion was profeſſed by ſundry of the nation privately, althoughe yt was not allowed openly by the princes and governours of the land. For wee read, that ſhortlye after Lucius, in Diocleſian's time (in time of the Romane's government) at the place called Holmehurſte, which is nowe called St. Albons, was Albon the martyr executed for the teſtimonye of Chriſt. And the perſecution was ſo great as noe man durſt be acknowledged to be a Chriſtian. And as I have before ſaid, that after the comminge of the Angles and Saxons into this realme (they beinge of a phanatycall idolatrous religion, and havinge driven the naturall borne Britains into Walles), Chriſtian Religion was utterly extinguiſhed (except only amonge the ſmall remeyne of the Britains) until about the yeere of our Lord 482, at which time Auguſtine came from Rome and preached the Goſpel to Ethelbert kinge of Kent, whome he converted. Afterwardes religion being by his means planted at Canterbury, was propagated into the farther partes of this realme. For as my note out of the Canterbury manuſcript ſayeth in the xvijth leafe, Edwin kinge of Yorke and of Northumberland ſent to Edbald ſonne of Ethelbert deſiring to have his ſiſter in marriage: to whome was anſwere made: *Non eſſe licitum pagano dari in conjugium virginem Chriſtianam, ne fides & ſacramentum celeſtis regis, conſorcio prophanarentur regis qui veri Dei cultu eſſet prorſus ignarus*, &c. Uppon which anſweare Edwyn, for the deſire he had to joyne in marriage, did entreate to have ſent to him ſome that might inſtructe him in the Chriſtian Religion: and thereuppon one Paulinus was ſent, who treatinge and conferringe with his cheife archflamin Cophy (named by my Canterbury manuſcript, and by my Yorke Cophy Cœſdi) by goodly reaſones reclaimed him from his errors, and ſoe wrought with Cophy that for the better perſwadinge of Edwyn, he deſired that the ſame biſhop ſhould ſhew plainely how vain the idolles of the Gentiles whome he ſerved were. Therefore the biſhop, upon a ſolempne day in the preſence of the kinge, got on a horſe armed, and with a launce in his hand ran full courſe at the

the cheife idol, and ſo brake both the idoll and his ſtaffe in peeces, declaringe that hyt was but the work of mane's handes. Whereuppon the kinge was converted and married, and appoynted Paulinus to be archbusſhope at Yorke, as in theſe wordes and verſes is breifely ſet downe in my York book.

Summus & ille Cophy prothoſtamen tunc Eboraci
Credidit, armatus conterit ipſe phana.
Regis ad exemplum ruptis aris idolorum,
Innumerus populus confluit ad lavacrum, &c.

And my Notes of Canterbury ſay that this was done at a place neere on the eaſt of Yorke at a place called Godmundingaham, *ultra amnem Dorwantianem*, and that the king thereupon cauſed all the idolles temples to be burnte and raſed. Sythence which time the goſpel did encreaſe, and hath continued in this iſland throughout from the north, and returninge to the eaſt thereof. Whereuppon ſundry greate abbyes were erected, as ſchole-houſes for dyvines, yea and for lawyers allſoe, as I have heretofore prooved by ſundry our ancient regiſters; as Peterborough founded by king Penda 58 years after Auguſtines comminge into the realme, and Ely at the ſame time, &c. For the better propagating of the goſpel there were held ſondry ſynodes or aſſemblies of the busſhopps for the diſcipline of the church, of which I have thought good to mention one which was had in *anno Domini* 673, *quo anno Egbertus rex obiit & Lotharius frater ejus ſucceſſit.*

Articuli decem concordati per Theodorum & alios epiſcopos hujus regni, &c. Among which I will recyte ſome.

Nullus epiſcoporum parochiam alterius invadat.

Nullus clericorum relinquens proprium epiſcopum diſcurrat paſſim abſque commendativis Literis.

Nullus epiſcoporum ſe preferrat alteri per ambitionem, ſet omnes cognoſcant tempus & ordinem conſecrationis.

Nulli liceat niſi legittimum connubium habere.

Nullus inceſtum faciat.

Nullus conjugem propriam deſerat fornicationis gratia, quodſi deſerat, ſi Chriſtianus eſſe velit, nulli copuletur, ſet ita maneat aut proprie copuletur.

But helas! as religion encreaſed, ſoe with the quietnes of peace, it growed into contempt, inſomuch, that moſt lamentably Gildas, ſome 200 yeares after cryed out both againſt prince and people *ore prophetico*, denouncynge Godes judgements for the wickednes of the land, which ſhortely after enſued, as appeareth in hiſtory. By thoſe examples, I pray God, wee may reforme oureſelves, and ſay with the Prophet David, *Letabitur juſtus, cum viderit ultionem: pedes ejus in ſanguine impij lavabit. Et dicit homo certe juſtum manet ſuus fructus, certe eſt Deus judicans in terra.*

N° XXVIII.

Of the ſame.

By Sir WILLIAM DETHICK, garter principall kinge of armes.

29 November 1604.

FOR the Chriſtian Religion in England. It ſeemeth that after the firſt invaſion made by the Romanes into this iſle by Julius Cæſar, the paſſages and intercourſe for their armies and colonies were made open, as the hiſtories doe agree; and it is probablye affirmed that Joſeph of Arymathea after the paſſion, deathe, and reſurrection of our Saviour Chriſt, anno 53 dide come into theſe partes, wheare he did playnely publiſhe and divinely declare the truth of the Chriſtian Religion unto muche people, who were moved to the admiration of trewe beleffe of ſalvation, when reſurrection after deathe was preched unto them in the primative pureneſſe of religion, then voyde of idolatrie nd Pagan ſuperſtition. All which laſted not long tyme, but periſhed by the fearfull perſecution under Diocleſian the

emperour as appeareth. And the ſame was hardly agayne beleved or knowen untill the tyme of Lucius, the ſonne of Coill, the ſonn of Maryus the Romayne that maryed one of the Daughters of the Erytaynes. For Tacitus in the lyffe of Agricola maketh no mention thereof, but of the generall ſuperſtitions and idoles of the Bryttaynes and their Druydes.

What is reported by Mr. Jewell buſhop of Sarum, of that tyme of Lucius, when Eleutherius then buſhop of Rome ſent his letters unto Lucius, appearethe very effectuall: ſignifieing that he ſent him bothe the Ould and Newe Teſtaments, and how for that kingdom the king was God's vicar.

Since which tyme how often, how variable, and many wayes this religion hath been chainged and transformed, &c. I leave to the diſcourſe of the writers of Chronicles and others.

N° XXIX.

Of the ſame.

By Mr. WILLIAM CAMDEN.

FOR the profeſſion of Chriſtian Religion in this yſle, I knowe no place of higher antiquitie or better credite than that of our Gildas, who ſaith, that immediately after the paſſion *glaciali frigore rigente, inſulæ & velut longiore terrarum ſeceſſu ſoli viſibili non proximæ verus ille ſol radios ſuos primum indulſit*. By whoſe meanes or miniſtery in particular this was begonne, it will not be eaſely diſcovered, for even as kingdomes, ſtates, and cities, ſo religion beganne in them by little and little; yf the credite of Dorotheus biſhoppe of Tyre do waie any thing, the Chriſtian Religion was planted here by Symon Zelotes, who, as he ſaieth, was martyred and buried in Bretania; and Ariſtobulus mentioned by St. Paule in the Epiſtle to the Romanes, was biſhop of Bretania;

Bretania; but I feare ſome Critickes will ſaye, it was not oure Bretania, but Bretiana, a parte of Italy now in the kingdome of Naples; for we ſee both in the eclogues of Polybius, and in the 42 booke of Dion, where they ſpake of that countrie, it is corruptly in the Greek bookes Bretania. The receaved opinion is, that Joſeph of Arimathea was the firſt planter of Chriſtianitie in this iſle: but uppon whoſe authoritie this common opinion is grounded I cannot as yet finde. The moſt auncient that I know of this opinion is William of Malmeſburie in his booke of the antiquitie of Glaſtenburie, Henry de Bloys, Abbot of Glaſtenburie and brother to king Stephen, who hath theſe words: *S. Philippus Francorum apoſtolus miſit duodecim ex diſcipulis ſuis ad evangelizandum verbum Vitæ in Britanniam: quibus ut ferunt, chariſſimum amicum ſuum Joſeph qui dominum ſepelivit, præfecit. Venientes igitur in Britannia anno ab Incarnatione Domini* lviij. *fidem Chriſti prædicabant.* An old manuſcript which Baronius ſaw in the Vatican Librarie reporteth the matter otherwiſe, videlicet, That Lazarus, Marie Magdalen, and Martha being baniſhed from Jeruſalem and thruſt into a ſhip, without tackling, arrived in Gallia, and with them Joſeph of Arimathea, whome ſaieth he *(ut tradunt)* ſailed hither. Theſe two relations thus differing, and therefore of leſſe credite, were drawne I cannot tell whence, unleſſe from theſe words of Freculphus who lived about 700 yeares after Chriſt: *Philippus Gallis prædicat Chriſtum. Barbaras gentes vicinaſque, tenebris & tumenti oceano conjunctas, ad Scientiæ lucem fideique portum deducit.* It may be thought that William of Malmeſburie underſtoode Britaine by *Barbaras gentes vicinaſque tenebris & tumenti oceano conjunctas.* Albeyt ſome will thinke, that this was too ſhorte a tyme to propagate religion into a place ſo farr remote from Jeruſalem. And whereas the perſecutions do ſeeme, in the judgement of many learned men, to have beene the firſt and moſt principall occaſions of ſpreadinge the goſpell into places farr diſtant, and therby they do gather, as places fardeſt of laſt ſuffered perſecution ſo they allſo later receaved the faith; I could therfore rather incline to think that Chriſtianitie came

ſomewhat

ſomewhat later hither, as to a place fartheſt removed, and which only ſmarted under the laſt perſecution: and that aboute the time of Commodus, when Eleutherius ſate at Rome. For the Romane martyrologe, which no doubt is of auncient and good credite, teſtifieth that Eleutherius ſent ſome hither to teach the Chriſtian Religion at the requeſt of king Lucius, and the epiſtle is yeat extant, being of more credite, for that it is dated, *L. Aurelio Commodo iterum & Veſpronio conſulibus*; whereas that kinde of date was unknowne to the counterfetting and unlearned monkes of latter times. Whereas ſome do call this in queſtion, as though there were noe king in Britaine at that tyme, being then a province of the Romaines, and ſo would overthrow the credite of this matter, I would onely have them to recall to memorie; firſt, that the Romaines a long time maintained kinges in their provinces, *ut inſtrumenta ſervitutis*, as Tacitus ſaieth, to ſerve their owne turnes; ſecondly, that the Britaines at that time utterly refuſed to be ſubject to Commodus; thirdly, that the northern parts of the iſle had ſtill their kinges, and were never fully reduced under the Romaines; laſtly, that Capitolinus affirmeth expreſly, that a little before this *Antoninus Pius confecto Bello, regna regibus, provincias comitibus ſuis regendas permiſiſſe*; and to this tyme maye be referred that which Tertullian in generall ſaieth in his apologettick, of the chriſtians, *externi ſumus & veſtra omnia implevimus, urbes, inſulas, caſtella, municipia*, &c. and in particular of Britaine, *Britannorum inacceſſa Romanis loca, Chriſto ſunt ſubdita*, as for that which Venantius, Fortunatus, Sophronius, Theodoret, Nicephorus, and Simeon Metaphraſtes doe write of St. Peter's and St Paule's comming hither; I know it will carrie the leſſe credite with ſome men, who hold for a ground, that in hiſtorical matters, *Qui tempore & loco propriores, fide potiores habeantur.*

N° XXX.

Of the ſame.

By W. HAKEWILL.

29 November 1604.

WHEN and by whome the firſt ſeedes of the Chriſtian fayth weare ſewen in this iſland is no leſſe doubtfull and uncertayne, then it is cleere and without queſtion, that within the ſpace of a verie fewe yeeres after the Paſſion of our Saviour thoſe glad tydinges of ſalvation weare brought hether. And although by means of the great calamities and troubles which this lande was ſubject unto in thoſe dayes, the diſtinct and cleere teſtimonies hereof have either been loſt, or weare never at all committed to writing, yeat are there many arguments and reaſons which do prove, that even the warres themſelves, and the bondage which our annceſtors then endured under the Romanes, was by the mercy of God ordayned to bee a meanes of their firſt knowledge of Chriſt Jeſus. In that reſpect, as it is well ſaid of a learned author of theis tyme ſpeakinge hereof, *Hoc Romanorum jugum quamvis grave, tamen ſalutare fuit.* For the faythe of Chriſt havinge beene preached in the world ſome dozen yeeres or more with admirable ſucceſſe, and that in Rome itſelfe by ſome of the apoſtles before the comminge over of the emperor Claudius in perſon into this iſland, to omit the probabilitie that in the great trayne which followed him hither, there weare ſome chriſtians amongſt the reſt which came hether with him, and to conſider onely the great commerce and intercourſe between Rome and Britaigne in thoſe days; the great number of Britaignes hoſtages, captives, and others then in Rome, and the outragious perſecutions there, which drove thence the chriſtians to places of more ſafety and libertie; it is verie likely that ſome Britaignes, beinge converted to the Chriſtian fayth, retorned home, and ſom Romans, and others, being perſecuted

ſecuted, fledd hether, as to a place where they might of any other in the world moſt freely enjoye their conſciences. To this may be added the teſtimonies of divers anncient writers, as Sophronius, Theodoret, Tertullian, Nicephorus, and Gildas who affirmeth that the light of the goſpell ſhyned to this iſland in the dayes of Tiberius, which muſt be within five yeeres after Chriſt. All agreeinge in generall termes that this iſland, though the moſt weſterne then known in all the world, had the early and morning ſunſhyne of the goſpell before many other not ſo remote. But when wee endevor to name and aſſigne out the perſons who had the honor of this highe office heere, we wander in many doubtes, and have juſt cauſe to complaine of the unhappineſſe of thoſe dayes, which left us no more knowledge of that poynt which was ſo worthie of our perpetuall memorie. By means hereof the opinions of authors are herein very divers and variable, inſomuch as emongſt them, I fynde ſix ſeveral perſons names to whome they have attributed this honor; that is to ſay, to three of the apoſtles themſelves, St. Peter, St. Paule, and Simon Zelotes; to two apoſtolical men, Ariſtobulus, whome St. Paule nameth in his epiſtle to the Romans, and Joſeph of Arimathea that buried Chriſt, as alſo to Claudia Ruffina a Britiſh Lady, living then in Rome, and beinge the wyfe of Prudens a Roman ſenator, and the mother of the two famous virgins Praxedes and Pudentiana, who alſo receaved and lodged in her houſe both St. Paule and St. Peter, and whom St. Paul ſaluteth in his epiſtle to Timothy. The three foreſayd apoſtles and Ariſtobulus are by ſom auncient authors reported to have been heere in perſon; but the authoritie itſelfe is ſo weake, and ſo fayntly purſued by the later writers, as of them I muſt conclude, I do rather wiſhe itt than belyeve itt. Ruffina is ſayd to have ſent hether bookes and meſſuages to her friends, and that thereby men weare converted to Chriſt. But that conjecture beinge altogether founded upon Martiall's verſes in prayſe of her and her children, is in my opinion well confuted by a late author, provinge that it coold not in lykehood bee one and the ſame woman who entertayned St. Paule when

hee was in Rome, and whom Martial commended for her beautie 60 years after in the days of Trajan; obſervyinge that yf it had beene the ſame, ſhee muſt have been in the daye of Martial exceedinge old and ſo not ſo highely to be prayſed for her beutie. Notwithſtanding, it may bee, that God uſed all or moſt of theiſe as meſſengers or meanes of his Grace to this Iſland. And although, becauſe it maketh much for the honor of our contrie, I coold eaſyly beleeve itt, yeat to ſay my opinion, the arguments, at leaſt ſuch as I have ſeene, are not ſo pregnant for any of the reſt, as for the beeing here of Joſeph of Arimathea. For beſides that ſome anncient writers do beare record hereof, thoſe epithets and names which have beene by our anncеſtors geven to Glaſtonburie (the place which Arviragus then king as is reported, gave him to dwell in) is no ſmall teſtimonie of the truth hereof. For wee fynd it in anncient charters called *the land of God, and the grave of the mother of the Sayntes*; and in the charter of confirmation of that abbie from H. 2. recitinge the charters of many of ancient kinges before the conqueſt, it is ſayd to be firſt built by ſome of the diſciples of Chriſt themſelves. To this may be added that which in the German cronicles wee fynd reported of one Suetonius a nobleman's ſon of Britaigne, who about 70 or 80 years after the tyme aſſigned for the comming hether of Joſeph, beinge converted a Chriſtian, and baptized by the name of Beatus, departed out of England for the farther confirmation of his fayth; and after he had longe lived in the obedience of the goſpell in Germanie, died there about 110 yeares after Chriſt. This nobleman by ſome late authors is verie probably geſſed to have beene converted by Joſeph. A more cleare teſtimonie hereof is, that thoſe two meſſengers which Lucius about 110 yeeres after the tyme aſſigned to the comminge hether of Joſephus, ſent unto Eleutherius, weare both of them bredd in or neere the very place where Joſephus and his diſciples are ſaid to be moſt reſident, namely neere Glaſtonbury, as by their names is evident; the one of them beinge in hiſtories called Elvanus Avalonius, of the iſle of Avalon, the other Melgunius

gunius de Belga of Wells. And though the ſame men wear alſo Chriſtians before they departed hence, of which, beſide that it is ſo reported of them in hiſtorie, and ſo verie lykely to bee ſom of the fruitc of that ſide of the goſpell which by Joſephus was ſowen in thoſe partes, this is alſo an argument. They both weare by Eleutherius joyned with Faganus and Damianus in the miniſtery of the Goſpell, the which, it is lykely woold not ſo have beene, but that they weare found to bee men well grounded in the fayth. With this do concurr all our later hiſtoriographers for 200 yeares laſt paſt. And this is the opinion of Cæſar Baronius uppon the view of them all. So as that Joſephus was heere, and that he lived and died at Glaſtonburie, I do not much doubt; the greateſt doubt is of the tyme of his coming hether, the which by ſom authors is ſayd to bee about the 64th yeare after Chriſt. But in my opinion it is moſt unlykely ſo to bee. For wee reade in the 15th chapter of St. Mark, that hee was att the tyme of the paſſion, *nobilis decurio* which is, how well I know not, tranſlated an honorable counſellor. And in Luke 23. *non conſenſerat conſilio & actibus eorum.* Upon which place itt is collected that hee was one of the Sanhedrim, and of that counſell which ſate in judgment uppon Chriſt, as was alſo Nichodemus, who both weare Chriſt's diſciples, but ſecreatly, for feare of the Jewes. By which places wee maye geſſe hee was then an old man, and not lykely to have lived after that tyme 64 yeares, beſide the tyme which hee lived heere in England; eſpecially not lykely to have undertaken ſo great a jorney. And this is the error of Holingſhed. I do better allowe their opinions which aſſigne the tyme to bee about the 30 or 31 yeare after the Paſſion. Though in reſpect of his age I wold rather beleeue it to have beene ſooner then otherwiſe. It is ſayd of him that hee came from the Holy Land in companie of Marie Magdalene as far as Marſelles in Fraunce, and was from thence ſent over by Phillip the apoſtle of Fraunce as the Cheefe of 10 diſciples ſent hether to preache the goſpell. But theiſe thinges are not ſo certayne, as that which about 110 yeres after hapned in this iſland touchinge the converſion thereof in the days of Lu-

cius. Of whoſe embracinge of the fayth, though the hiſtorie bee by moſt men receaved for true, yeat have ſom doubted, ſuppoſing that this iſland beinge by Claudius reduced to a province, had no kinge in thoſe days. This objection is well anſwered by Baronius, that the Romans poſſeſſed not all the iſland, but that a part thereof, namely bejond the Wall, was in the handes of the Britaignes. Agayne, that Lucius might bee a pettie kinge under the Romans, as in many other provinces they had the lyke. But the conſent of writers herein is ſo generall, as no doubt neede be made heerof. Another famous and more publick converſion of this iſland was about 400 yeares after by Auguſtine ſent from Gregorie the I. At which tymes the Saxons had dominions heere; and had almoſt utterlie extinguiſhed the religion planted by Eleutherius. Of this I will forbeare to ſpeake perticularlie, being a hiſtorie ſo familiarly knowen. Neyther will I touch the controverſie whether thoſe that firſt preached here came from the Eaſt or the Weſt, nor how far religion was then corrupted, and in what poyntes it remayned pure, beinge queſtions which require longe diſcourſe, and more learning then I have.

N° XXXI.

Of the Antiquity, Uſe, and Ceremony of lawfull Combats in England.

By Sir Robert Cotton, Bart.

22 May 1601.

WHERE differences could not be determyned by legal proof or teſtimony, the party was allowed his purgation, which was either *canonica* or *legalis* *. The firſt, which was by oathe, was called *canonica*, becauſe it was lawfull: the other, which which was either *per aquam*

* Lib. 3. Capit. Caroli magni de teſtibus. Bracton lib. 3. cap. 18. fol. 137.

candentem,

candentem, ferrum ignitum, or *duellum* was called *Vulgaris*, becauſe thoſe methods of purgation were brought in by the barbarous people without the pretext of any lawe, untill the Gottiſh and Lombard kings, ſeeing their ſubjects more addreſſed to martial diſcipline then to civil government, reduced thoſe tryalls to forme and rule, the conſtitutions for which are nowe incorporated into the civil law *.

From theſe northern nations, of which the Saxons and Normans or Northmanni are parte, it was brought into this land. And although longe agoe it grew into diſuſe, and was both by the decrees of king Deſiderius Lutprandus, and the mother churche, diſcontynued amonge the Lombards, as ſoone as they grewe civiliſed in Italy, yet it conteynued till of late with us as a marke of our longer barbariſme. Neither would we in this obey the ſee of Rome, to which wee were ſoe long in many reſpects obſervant children, and the which, for that in the duell, *condemnatus ſepe abſolvitur*, and *quia Deus tentatur*, decreed † ſoe often, and ſtreightly againſt it.

In England this ſingle combatt was either granted to the party by licence extra-judiciall, or by legal proceſs. The firſt was ever from the kinge, as a chiefe flower of his imperiall crowne; and it was for exerciſe of armes eſpecially.

Thus did Richard the Firſt gyve leave for tournaments in five places of England, *inter Sarum & Wilton, inter Stamford & Walenford*, &c. *Ita quod pax terræ noſtræ non infringetur, nec poteſtas juſtitiaria minorabitur* §. For performance wherof, as likewiſe to pay unto the king according to their qualities or degrees, a ſum of money proportionable, and that to a good value, and to the advantage of the crown, they took a ſolempne oath. The like I finde 20 Edw. 1 and 18 Edw. 3. where it is grannted *viris militaribus comitatus Lincoln* to houlde a juſt thear every year ‡. Richard Redman, and his three companions in armes, had

* Leges Lombard, foll. 17. 6. Lutprandus rex. Propter conſuetudinem gentis legem impiam vetare non poſſumus. Ex papienſi hiſt. lib. 9. cap. 11. † Lib 5. Decret. 2 V. cap. 2. Queſt. 4. § L. Rubr. in Saccario in Breve Rog. Arch. Cant. ‡ Rot. Parliam. 20 Ed. 1. Pat. 18. Ed. 3. m. 44. Part. 2d.

licence

licence of Richard the Second: *haſtiludiare cum Willielmo de Halbarton cum tribus ſociis ſuis Scotis apud civitatem Carliol* *. The like did Henry the Fourth to Jo. de Grey †. And of this ſorte I finde in record plentifull examples.

'Yet did Pope Alexander the Fourth, followinge alſo the 'ſteps of his predeceſſors Innocentius and Eugenius, pro- 'hibit throughe all Chriſtendome, *deteſtabiles nundinas vel 'ferias quas vulgo torniamenta vocant, in quibus milites 'convenire ſolent ad oſtentationem virium ſuorum & audatiæ 'unde mortes hominum & pericula animarum ſepe conve- 'niunt* ‡. And therefore did Gregory the Tenth ſende to K. 'Edward the Firſt his bull, *pro ſubtrahenda regis præſen- 'tia a torniamentis in partibus Franciæ* §, as from a ſpectacle 'altogeather to a Chriſtian prince unlawfull. For *gladia- 'torum ſceleribus non minus cruore perfunditur qui ſpectat, 'quam ille qui facit*, ſaith Lactantius ‖. And *quid inhuma- 'nius quid acerbius dici poteſt?* Saith St. Cyprian †‖, then 'when *homo occiditur in hominis voluptatem, et ut quis poſſit 'occidere, peritia eſt, uſus eſt, ars eſt. Scelus non tantum 'geritur, ſed docetur. diſciplina eſt ut perimere quis poſſit & 'gloria quorum peremit.* And therefore Conſtantine the 'Great, as a fruict of his converſion, which Honorius his 'Chriſtian ſucceſſor did confirme, eſtabliſhed this *edict. 'cruenta ſpectacula in otio civili & domeſtica quieti non pla- 'cent. Quapropter omnino gladiatores eſſe prohibemus* †‡. 'Their permiſſion hear amonge us, noe doubt, is not the 'leaſt encouragement, from fooliſh confidence of ſkille, of 'ſoe many private quarrels being undertaken.

'Combatts permytted by lawe are either in cauſes cri- 'mynall or civill, as in appeales of treaſon; and then out 'of the court of the conſtable or marſhall. Soe was that 'betweene Eſſex and Mountfort in the raigne of Henry

* Paten. anno 19 Ric. 2. p. 3. m. 16. † Paten. anno 5 Hen. 4. m. 8. ‡ Matthew Paris, Roger Stoveden, Concil Roman, anno 1179. § Bulla Greg. 10. dat. anno 3. Pont. ‖ Lactantius Decimar. inſtit. cap. 6. †‖ St. Ciprian lib. 2. Epiſtol. 2a. †‡ Euſeb. in vita Conſt. lib. 3. Sozom. lib. 1. cap. 8. lib. 11 cod. Glad. Ex cod. Theodoſiano. Theodoret. lib. 5. cap. 26.

'the Firſt for forſaking the king's ſtandard *. That be-
'twene Audley and Chaterton for betraieing the forte of
'Saint Salviors in Conſtantine 8 Rich. 2 †. And that of
'Bertram de Uſana and Jo. Bolmer ‡, *coram conſtabulario*
'*& mareſcallo Angliæ de verbis proditoriis, anno* 9 H. 4.
'The forme hereof appeareth in the plea rolls, *anno* 22
'Edw. I. in the caſe of Veſey §. And in the booke of the
'marſhalls office in the chapter ‖: *Modus faciendi duellum*
'*coram rege.*

'In appeales of murder or robery the combatt is graunted
'out of the court of the King's Benche. The preſidents
'are often in the Bookes of lawe, and the forme may be
'gathered out of Bracton and the printed reports of Ed.
'3. and Hen. 4 ‖†. All being an imitation of the Nor-
'man cuſtom, as appeareth in the 68th chapter of their
'cuſtomary; from whence wee ſeeme to have brought it ††.
'Thus farre of combatt in caſes crymynall.

'In cauſes civill it is graunted either for tytle of armes
'out of the marſhall's court, as betwene Sir Richard
'Scroope and Sir Robert Groſvenor‡‡, Sitſilt and others §§.
'Or for tytle of land by a writt of right in the court of the
'Common Pleas. The experience hereof hath byn of late
'as in the caſe of Paramour, and is often before founde in
'our printed reports, whear the manner of darraigning
'Battail is likewiſe as 1 Hen. 6 ‖‖. and 13 of Eliz. in my
'Lo. Dier expreſſed ‖‡.

'To this may be added, though beyonde the cogno-
'ſcenſe of our common law, that which hath in it the beſt
'pretext of combatt, which is the ſaveinge of Chriſtian
'bloud by deciding in ſingle fighte that which would be
'otherwiſe the effect of publique warre.

* Jocelinus de Brackland cap. 12. † 2 Pars. Pat. 8. Ri. 2. m. 8.
‡ Rot. Vaſcon. anno 9 Hen. 4. § Placit coram rege 22 Ed. I.
‖ Lib. de officio mareſcall. ‖† Bracton lib. 3. cap. 21 anno. 17 Ed.
3. 9 Hen. 4. †† Ex conſuetud. ducatus Norman. cap. 68. Tit. de
ſequella multri. foll. 145. ‡‡ Ex breve reg. originali, ap. R. C.
§§ 14 R. 2. lib. breve regis. ‖‖ Reports anno 1 Hen. 6. ‖‡ Dier.
anno 13 Eliz.

'Such

'Such were the offers of Richard 1.* Edw. 3.† and Richard 'the Second to try their right with the French king body to 'body‡, and ſuch was that between Charles of Aragon and 'Peter of Terracone for the iſle of Sicilie, which by allow-'ance of pope Martinus the Fourth, and the colledge of 'cardinalls, was agreed to be fought at Bordeaux in Aqui-'taine§; wherein under favor he digreſſed farre from the 'ſteppes of his predeceſſors Eugenius, Innocentius, and 'Alexander, and was noe pattern to the next of his name, 'who was ſoe farre from approveing the combatt betwene 'the dukes of Burgundy and Glouceſter, that he did inhibit 'it by his bulls, declaringe therein, that it was *deteſtabile 'genus pugnæ omni divino & humano jure damnatum & fi-'delibus interdictum*‖. And he did wonder and greive, '*quod ira, ambitio, vel cupiditas honoris humani, ipſos duces 'immemores fecerit legis domini & ſalutis æternæ, qua pri-'vatus eſſet quicunque in tali pugna decederet. Nam ſepe 'compertum eſt ſuperatum fovere juſtitiam & quomodo exiſ-'timari quiſquam poteſt rectum judicium ex duello in quo 'inimicus veritatis diabolus dominatur*‖‡?

'Thus farre of Combatts, which by the lawe of the land 'or leave of the ſoveraigne have any warrant.

'It reſts to inſtance by a few records what the kings of 'England, out of regall prerogative, have done in reſtraint, 'either of martial exerciſe and pryvate quarrelle, or in de-'termyning of them when they were undertaken; and to 'ſhew out of the regiſters of former tymes, with what eye 'the lawe and juſtice of the ſtate did look upon that ſub-'ject that durſt aſſume otherwiſe the ſword or ſcepter into 'his owne hand.

'The reſtraints of tornaments by proclamation is ſo 'uſuall, that I neede to repeat, for forme ſake, but one out 'of many. The firſt Edward, renowned bothe for his wiſ-'dom and fortune, *publice fecit proclamari & firmiter in-*

* Rog. Hoveden. † Adam Merimouth in vita. Ed. 3. ‡ Rot. Franciæ 7 R. 2. m. 24 § Camoana delle famiglie regali di Spagna fol. 110. Juan do Molina Ceronica do los reges de Aragon, fol. 43. ‖ Bulla Martini, 5 dat. iij Kal. Maij anno 8 pont. ‖‡ Ibid.

'*hibere*,

'*hibere, ne qui ſub forisfactura terrarum & omnium tene-*
'*mentorum, torneare, bordeare, juſtas facere, aventuras*
'*querere, ſeu alias ad arma ire præſumant ſine licentia regis*
'*ſpeciali* *.

'By proclamation Richard the Second forbad any but
'his officers, and ſome few excepted, to carry any ſword or
'long baſtarde under payne of forfeiture and impriſon-
'ment †. The ſame kinge in the 19th yeare of his raigne,
'and upon the mariage with the French king's daughter,
'commanded by proclamation: *Ne quis miles, armiger, ſeu*
'*alius ligeus, aut ſubditus ſuus cujuſcunque ſtatus, aliquam*
'*francigenam, ſeu quemcunque alium de poteſtate & obe-*
'*dientia regis exiſtens*, upon what pretence ſoever, *ad ali-*
'*quid facta guerrarum, ſeu actus armorum exigat, ſub fo-*
'*risfactura omnium quæ regi forisfacere poterit* ‡.

'And as it hath ever reſted in the king's power to for-
'bid combatts, ſoe hath it been to determine and take
'them upp. Thus did Richard the Second in that ſoe
'memorable quarrel betweene Mowbrey and Hertford by
'exileinge them both §. And when Sir John de Aneſly
'and Tho. de Chatenton were readie to fight *eandem que-*
'*relam rex in manum ſuam recepit*, ſaith the recorde ‖.
'And *de mandato regis direptum eſt prœlium inter Johan-*
'*nem Bolmer & Bertramum de Veſana in the tyme of* Henry
'the Fourth ‖‡.

'Sir Jo. Fitz Thomas beinge produced before the earle
'of Glouceſter deputy of Ireland; and thear challenged by
'Sir William de Veſey, to have done him wrong in report-
'ing to the kinge that the ſaid Sir William ſhould have
'ſpoken againſt the kinge defamotory wordes, which Sir
'Jo. there preſented in a ſchedule ††: *prædictus Willelmus*
'*audito tenore ſcedulæ prædictæ dementitus eſt prædictum*
'*Johannem: dicendo mentitus es, tanquam falſus & pro-*
'*ditor. Et denegavit omnia ſibi impoſita, & tradidit va-*

* Placita anno 29 Ed. 1. Placita 31 Ed. 1 † Rot. Clauſ. 19 R. 2. dat 26 Feb. ‡ Clauſ. 19 R. 2. in dorſo. § Cron. S. Albani 22 R. 2. ‖ Pars Patentium anno 8 Ric. 2. m. 8. ‖‡ 2 Rot. Vaſconiæ anno 9 Henrici 4. m. 14. †† Placita coram rege 22 Ed. 1.

'*dium in manum juſticiarij qui illud admiſſit. Et prædic-*
'*tus Johannes advocavit omnia & dementitus eſt ſimiliter*
'*dictum Willelmum.* Whereupon the combat was granted, and
'the time, place, and inrolled proceſs adjourned into Eng-
'land before the King, who with his councell examyning
'the whole proceedinge, and that *Quia Willelmus attachi-*
'*atus fuit ad reſpondendum Johanni prædicto ſuper deſama-*
'*tionem principaliter. Et non ſit uſitatum in regno iſto pla-*
'*citare in curia regis placita de deſamationibus, aut inter*
'*partes aliquas duellum conſiderare in placitis de quibus cog-*
'*nitio ad curiam regis non pertinet* *. And for that the
'judge *vadia prædictorum Johannis & Willelmi cepit priuſ-*
'*quam duellum inter eos. Conſideratum & adjudicatum fuit*
'*(quod omnino contra legem eſt & conſuetudinem regni)*
'therefore *per ipſum regem & conſilium concordatum eſt quod*
'*proceſſus totaliter adnulletur.* And that the ſaid John and
'William *eant inde ſine die, ſalva utrique eorum actione ſua*
'*ſi alias de aliquo in prædicto proceſſu contento loqui volu-*
'*erunt.*

'A combat granted in a writt of right, Phillip de Pugill
'one of the champions, *oppreſſus multitudine hominum ſe*
'*defendere non potuit*, whereupon the people againſt him *in*
'*perpetuam defamationem ſuam in eodem duello creantiam pro-*
'*clamabant*, which the king underſtandinge, *aſſenſu ſtatuit*
'*quod prædictus Philippus propter creantiam predictam libe-*
'*ram legem non omittat, ſed omnibus liberis actibus gauderet*
'*ſicut ante duellum gaudere conſuevit* †.

'What Penalty they have incurred, that without lawe
'or licence have attempted the practiſe of armes or their
'own revenge, may ſomewhat appeare by theſe few fol-
'lowing records out of many that might be cited.

'William earle of Albemarle was excommunicated ‡, *pro*
'*torniamento tento contra preceptum regis.* To which
'agreeth at this day, for the duell, the councell of Trent §,
'and that held at Biturie ‖, anno 1584.

* Rot. Parlamenti anno 23 Ed. 1. † Patent anno 23 H. 3. m. 3.
‡ Dors. pat. anno 4 H. 3. § Conſil. Trident ſeſſ. 9. Tit. decreta reform. ‖ Conſill. Biturienſi foli. 1022.

'John

'John Warren earle of Surrey was fined at 10,000 'markes, *pro quadam tranſgreſſione videlicet in inſultu facto 'in Alanum de la Zouche* *.

'Talbois was comytted to the Tower for attemptinge 'to have ſlaine the lord Cromwell †. And becauſe *Robertus 'Garnoys inſultum fecit & percuſſit Edm. Fitz William, in-'quiſitio facta eſt de omnibus tenementis & catallis prædicti 'Roberti* ‡.

'Edward Dalmigrige accuſed by Sir Jo. Seintlegier, be-'fore the king's juſtice, *pro venatione & aliis tranſgreſſioni-'bus*, anſwered, that thoſe accuſations weare falſe, and 'threw downe his glove, and challenged *dirationare mate-'rias prædictas verſus prædictum Johannem per duellum: ſed 'quia contra legem terræ vadiavit inde duellum*, he was 'commytted to priſon *quouſque ſatisfeceret domino rege 'pro contemptu* §.

'Sir Nicholas de Segrave, a Baron, challenging Sir Jo. 'de Crombwell (contrary to the king's prohibition) becauſe 'he would not fight with him in England, dared him to 'come and defend him ſelf in France. Therein, as the 'record ſaith, ſubjecting as much as in him laye the realm 'of England to the realm of France. But he beinge ſtaied 'in his paſſage at Dover, was comytted to the caſtle, and 'afterwards brought to the King's Bench; and there ar-'raigned before the lords, to whom he confeſſed his fault, 'and ſubmytted himſelfe to the king *de alto & baſſo*. 'Wherfore judgment is gyven in theſe wordes: *Et ſuper 'hoc dominus rex volens habere adviſamentum comitum ba-'ronum magnatum & aliorum de conſilio ſuo, injunxit eiſdem 'in homagio fidelitate & ligeantia, quibus ei tenentur, quod 'ipſi conſiderent qualis pœna pro tali facto fuerit infligenda. 'Qui omnes habito ſuper hoc concilio dicunt quod hujuſmodi 'factum meretur pœnam amiſſionis vitæ* ||. Whereupon he 'was commytted to the Tower, and Robert Archer that 'attended him into France was comytted to priſon, ar-

* Clauſ. anno 3 Ed. 1. m. 2. † Parl. anno 24 H. 6. ‡ Inquiſ. anno 16 H. 6. § Placita de quo warrant. anno 8 R. 2. Suſſex. || Placita coram rege Paſ. 33 Ed. 1.

'raigned and fyned at 200 Marks *. In the end, and after 'much interceſſion, the lord Segrave was pardoned by the 'king, but could not obtain his liberty until he had put 'in ſecurity for his good behaviour. This courſe houldeth 'proportion with an antient law made by Lotharius the 'emperor in theſe wordes: *de his diſcordiis & contentionibus ſtudere ſolent & in pace vivere noluerint. & inde convicti fuerint, ſimiliter volumus, ut per fideijuſſores ad noſtrum palacium veniant, & ibi cum noſtris fidelibus conderemus quid de talibus hominibus faciendum ſit* †.

N° XXXII.

Of the ſame.

By Mr. DAVIES.

22 May 1601.

OUR queſtion is of the antiquity and manner of lawful combats, ſoe that we do admit and preſuppoſe, that ſome combats are laweful; that is, that ſome combats are allowed and juſtifyed by the lawe. Wherein (although the law of England be directly contrary to the canon law, which condemneth all ſingle fights that are voluntarily undertaken of bothe parties either for tryall of the truth, or for any cauſe but for defence of life or member, when a man is aſſaulted by his enemy, as beinge prohibited by God's law, which ſaith, *non tentabis Dominum Deum tuum:* yet the ancient cuſtom of this realm, which gave ſuch allowance to this kind of triall, as that in Glanvile's time, whoe lived under Henry the Second, it was uſed allmoſte in all actions reall and perſonall, doth not ſeeme to bee begunne and continewed without reaſon. For albeit a raſh and diſorderly undertaking of a combat, where the cauſe is not

* Placita coram rege Trin. 33 Ed. 1.

† Leg. Longobard, fol 45. circa an. 830.

judicially

judicially depending before the magiſtrate, and where it is not preſcribed by order or authority, maye juſtly be condemned as unlawefull; yet where there is an appeale, or an action hanging before a lawefull judge, before whom the parties are admitted to this kinde of tryall, this maye not be deemed a wilfull or voluntary act of the parties, but the act of the court, the act of lawe, and the act of juſtice. Again, if by the very law of nature, a man maye deffend his life with his life, when he is violently aſſaulted by his enemy, and hath noe other meanes of eſcape, ſhall he not by the ſame reaſon deffend his life with his life, when he is appealed of any capitall crime, as treaſon, murder, or robbery, and hath noe other proofe to clear him? And if a man may deffend his goods and poſſeſſions with his life when hee is eyther robbed or forciblye diſeized, ſhall he not doe the like in an appeale of robbery, or in a writt of right, for the ſame goods and poſſeſſions? And whereas the cannoniſt ſpeakes of the *tempting of God*, and compares the triall by combat to the triall *ferri candentis & aquæ bullientis*, which was likewiſe in Glanvill's time uſed in England uppon appeales of treaſon where the deffendant was eyther 60 yeares olde or mahemed, and ſo diſabled to deraign battaile: doubtleſs there is a great difference betwixt theſe trialls, for indeede in the triall by red-hott iron and boiling water, a miraculous preſervation is to bee expected. And therefore it is a plaine trying and tempting of God, but in an equall combat that is fought without diſadvantage, the ſtrength, the ſpirits, and the powers of nature do decide the controverſy.

I thought it not impertinent for the honor of the law of England, which hath an excellent harmonie of reaſon in it, to ſhew uppon what reaſons it gave allowance to the triall by combat; with this, that this kinde of triall hath alwayes beene an argument of a warlike and valiant nation, though the truth bee that it carryes with it a little taſte of barbariſm. For it firſt tooke beginning among the Gothes and Vandalls; from them it was derived to the Saxons and other people of High Almaine; from them to the Normans;

mans; and from the Normans to us. But nowe lett us ſee in what courts, for what cauſes, and with what ceremonies lawful combats were uſed when combats were in uſe within this realm of Englande.

Tryall by combats was admitted eyther in the court of the conſtable and marſhall uppon appeales of treaſon; or in the courts of the king uppon appeales of murder or robbery, or for title of inheritance in a writ of right.

The manner of triall by combat in the court of the marſhall and conſtable.

Firſt, it appeares by the book of 37 H. 6. fol. 20. that the law whereby the conſtable and marſhall doe proceed is the law of the land, and the law of the king; and the king's juſtices ſhall take notice thereof. For if a man be appealed before the king's Juſtices for the death of a man, the defendant may juſtifye and pleade that he killed him in a combat before the conſtable and marſhall. And this is a good juſtification by the law of the land.

Nowe for the proceeding and triall in the marſhall's courte upon appeales of treaſon wherein the combat was admitted, it was in this manner.

Firſt, a bill of challenge together with a gantlett was delivered into the court by the appellant. The deffendant denied the point of the bill and accepted the gantlett. Then if the appellant had no witneſſes to prove the matter of his appeal, the marſhall prefixt a day within forty, for deraigninge the combat, taking pledges of bothe parties to appeare at the day, and to do battail beetween ſun-riſing and ſun-ſetting. The place appointed for the combat was a hard and even ground, rayled within certain liſts, ſixty foot in length and forty foot in breadth. Without the liſts were certain counterliſts, within which the marſhall's men came, as well to attend any extraordinary accident within the liſts, as to keep off the preſſe of the people without: their weapons appointed were a glaive, a long ſworde, a ſhort ſword, and a dagger. At the day, the appellant did appear, and came to the eaſt gate of the liſts, where he was admitted

to

to enter by the marſhall himſelfe, together with his armor, weapons, vittaile, and his counſell with him. And then he was brought to a certain place within the liſts, where he attended the coming of the defendant. The defendant, if he appeared not, was called in by three proclamations made by the marſhall of the kinge of heralds of that province wherein the combat was darraigned.

The marſhall's clarke did enter into his regiſtery their coming and the tyme of their comming, and the manner, whether on horſeback or on foot, the faſhion of their armor and their weapons, the colour of their horſes, and the like.

The marſhall himſelf did meaſure their weapons; and then the marſhall had a clark ready, who brought forth a crucifix and a maſſe book, whereuppon bothe the appellant and deffendant did take their oaths. But before they tooke their oaths, the bill of challenge of the appellant, and the anſwer of the deffendant was read unto them by the marſhall's clark. The oaths which they took were; firſt, that their appeal and defence was trew; ſecondly, that neither of them had advantage of the other, by weapon, charm, or enchantment; and thirdly, that either would do his beſt devoier to vanquiſh his enemy. Then proclamation was made at every corner of the liſts for the clearing and voydance of the liſts. And then the combatants beinge ready, the conſtable or marſhall ſitting at the king's feet, pronounced theiſe words with a high voice: *Leſſes les aller, leſſes les aller, leſſes les aller, & faire leur devoir.*

In the fight, if either of the parties did give any ſign of yealding, or if the king, being preſent, did crie *hoe*, the conſtable and marſhall did part them, and obſerved preciſely what advantage or diſadvantage either had of the other at the inſtant; for if they ſhould bee awarded to fight again, they are to be putt in the ſame poſture as they were before.

If the king tooke up the matter they were brought honorably out of the liſt, neither having precedence before the other. If the battail was performed, and one party was vanquiſhed, then, in caſe of treaſon, the rails of the liſts were

were broke down, and the party vanquiſhed was driven out at a horſe's heels, and carried preſently to execution by the marſhall.

The manner of triall by combat in a writt of right.

In a writt of right, when the miſe is joyned to be tryed by battaile, the battaile is ever both waged and done by champions and not by the parties. And the champions muſt bee free men, and ſuch as might be competent witnneſſes in the cauſe; for ſayth Glanvile, lib. ii. cap. 3. *talis debet eſſe Campio qui ſit & eſſe poſſet inde teſtis idoneus.* For this reaſon the parties themſelves cannot in proper perſon wage battaile, *quod id fieri non poteſt, niſi per teſtem idoneum audientem vel videntem.* And therefore before the Stat. of Weſtminſter i. cap. 40. the champion did ſwear, when he waged battaile, that he ſaw the deffendant or tenant take Eſplees of the land, or elſe heard his father ſay on his death-bed, that he ſaw it, and enjoined him to teſtify as much. For the words of Glanvile are to that effect, where he makes the deffendant ſay, *et ho: paratus ſum probare per hunc liberum hominem cui Pater ſuus injunxit in extremis agens, in fide qua filius tenetur Patri, quod ſi aliquando loquelam de terra illa audiret, hoc diracionaret ſicut id quod pater ſuus vidit & audivit.* But becauſe the champions were for the moſt part perjured in taking this oath, it was ouſted by the Stat. of W. I. cap. 40.

The champions did firſt wage battail; that is, they did firſt offer themſelves to the court, and gave pledges to do battail; and then at another daye they came again, and did acquite their pledges by dooing and performing the battaile.

The waging of battail was in this manner.

At the day when the tenant was demandable, the defendant's ſerjeant did reherſe the count. The tenant's ſerjeant made his deffence, and pleaded, that he was ready to deffende his right by the body of his free man, whome hee preſented at the bar, holdinge him by the right hand,

whereon

whereon he wore a gantlett. The deffendant's ſerjeant replied in the like manner, and brought his champion to the bar, with the ſame ceremony. And this was done by the Serjeants, though the parties were preſent in proper perſon.

Then a day was appointed when the champions were to appear in their array. At which day they came into the court, and the one was placed on one ſide of the court, and the other on the other ſide, bare-headed and kneeling. Then the cheif juſtice did call for their gauntletts and ſearched if there were in each gauntlett five pence, in every finger ſtall a penny, and then re-delivered the gauntletts to the champions. Then he demanded of both the champions ſeverally, if they would performe the battail; and they anſwered that they would. He then demaunded of the ſerjeants, if they could ſay ought why the battail ſhould not proceede: and they anſwered, that they could ſaye nothing. Then taking pledges of the champions he gave them a daye to do their battail, charging the parties that they ſhould not ſuffer their champions to come into market, fair, nor taverne, and commaunding the champions, as well to do no hurt or miſcheif, to each other, in the meane time, as alſo to goe, the one to Powles, and the other to Weſtminſter, there to offer up their five pence in honor of the five wounds of Chriſt, and to praye to God to give victory unto him that had right. At the day of the battail the parties and theire champions did appeare againe at the barr; and then the count and the defence, and the continuances, and names of the champions were reherſed. Then the deffendant brought foorth his champion in red leather with a red targett at his back; and a knight held his red baſton or trunchion of five quarters in length, blunt at the end without a knobb. Then the cheef juſtice did meaſure their ſtaives, and ſearched them if they had any charm or herbe about them; and if they found any, as they found rolls of orizons about the champion of the buſhope of Sarum 29 E. 3. in a writt of right for the caſtle of Sherborne, they diſmiſt the champions for that daye. But if all things were well, and without diſadvantage, then they proceeded to dooinge of battaile at the place appointed, which was

commonly in ſome open feild neer Weſtminſter, as in 13 Eliz. in Tuthill Feild. A ſtage was erected in forme of a courte of juſtice, the liſts rayled in 20 yards ſquare, and the champions were brought in by two knights, and then, after proclamation made, an oath was given unto the champions, not much differing from that given in the marſhall's court, and then the champions did their devoir one againſt the other, and according as the victory fall out, ſo judgment finall was given in the action.

The manner of gaginge battail in caſe of murder or robbery.

The defendant having pleaded not guilty, and having put himſelfe upon deffence by his body, the plaintiff was demannded by the courte, and commannded to take the deffendant by the left hand, and to ſay unto him, laying his right hand upon the book, and calling him by his name of baptiſm; *T. . . . . whom I hold by the hand, I doe heere charge thee, that thou ſuch a year and daye didſt felonioufly robe me of two of my kine, and this am I ready to ave'y my bodye as a good and lawfull man, and that my appeale is true*; *ſoe help me God and his Saints.* Then they disjoined their handes again, and the deffendant tooke the plaintiff by his left hand, and ſpake to him in this manner, *W.* calling him likewiſe by his chriſtian name, whom *I hold by the hand, thou haſt falſly lyed uppon me, for that I did not robe thee of thy kine, as thou haſt charged me, and this am I read to maintaine by my body, and that my deffenſe is true*; *ſoe help me God and his Saints.* Then the plaintiff within three dayes found pledges of his battail, and went at liberty, but the deffendant was commanded to the marſhall, whoe was to ſuffer him to have his eaſe, and *manger & boyer*; and the plaintiff was commanded, that the night before the battail, he ſhould come to the marſhall to be arrayed and armed by him, ſo that he might be ready the next morning at the riſing of the ſun to do battail. The appellant's head was ever covered, but the defendant's rayed; yet upon an endictment, if the party indited became an approver, his head was rayed and the appelee was covered, and generally in the battaile, upon an appeal, the

ſtaves

ſtaves of the combattants had knobbs, and therein differed from the baſtons of the champions in a writt of right. At the time of the battail, if either of the parties was caſt to the earth, the judges might interrupt the battail, and cauſe the party, that is in ſuch diſtreſs and diſadvantage, to come before them, and then demand if he will have any more of the battail, and if he anſwer he will, then is he to be layd in the ſame diſadvantage, and if he refuſes to fight, he is preſently to be hanged.

Perſons excuſed from battaile.

I. Clergymen: and therefore 42 Eliz. lib. cor. 99. an appelee, when he came into the field, avoyded the battaile by praying his clergy.

II. Cityzens de Londres per charter del Citty.

III. Sexagenarii.

There is this difference betwixt the plaintiff in an appeale and an approver, for if the appellant vanquiſh he ſhall be quitt, but if the approver vanquiſh he may be notwithſtanding executed. If an approver appeall twenty he muſt fight with them all one after another, but if divers approvers appeal one, if he vanquiſh one he is quitt againſt all.

Nº XXXIII.

Of the ſame.

By Mr. DAVIES.

22 May 1601.

I Suppoſed, and ſo yt falleth forth amongſt this learned aſſembly, whylſt one treateth of one part of a queſtion, and ſume of another, there would be nothinge left for mee to utter concerning the antiquity, ceremony, and uſe of combatts. But becauſe I would not ſeem to be ſilent,

beinge otherwiſe enjoyned by the Laws of this Aſſembly, I have undertaken to proove that combatts are juſtly abrogated by the laws divine, civill, canon, and national; all which ſeeme well to diſallowe tornements and combatts done with the ſharpe, whereof death might enſue, but eſpecially ſutch combatts whereof the authority of the judge may determine. The arguments then to proove theſe combatts juſtly to bee forbidden, are breifly drawn into ſillogiſmes in this ſort.

Firſt, Every act is prohibited by the law of God, whereby God is tempted. The precept of the fourth of Matthew is *non tentabis Dominum Deum tuum*; but this combatt is an Act whereby the Divine Majeſty is tempted, for this thinge is only ſought therein that God would in that fight manifeſt by victory whither party doth nouriſh the truth. Therefore yt is prohibited by the law of God.

Secondly, This manner of combatt is the invention of the divil, as appeareth in the laws cited by Bruceurus in his booke de Duello. Therefore there is no man who doubteth but that it is repugnant to the law of God.

Thirdly, When a thinge is prohibited by any law; that ſeemeth alſo to be prohibited, by which it is effected; but the Divine Law prohibiteth murther, therefore the meanes to committ murther are prohibited, and conſequently combatt, the cheife means to murther, is prohibited.

Laſtly, Whatſoever is againſt charity and love of our neighbor, which is the foundation of all vertue, is expreſely forbidden. But this manner of combatt is ſo farre from the love of our neighbor, that it altogether intendeth his hurt and deſtruction. Therefore the Scripture forbiddeth this combatt.

The canon law, which pretendeth to have receaved its light and grounds out of the woord of God, doth condemn combat in many places, which for brevite ſake I omitt, referringe thoſe that deſire the knowledge thereof to the bookes of thoſe lawes.

That the law of nations hath combatt in hatred, may thus be verefied. All actions reſiſting to naturall equity, upon which

which the law of nations is founded, are forbidden by the lawe of nations. Now this combatt doth repugn naturall equity, for the equity of the law of nations doth command, that the offendors ſhould be puniſhed, and the innocent abſolved, which doth not alwaies happen in combatts. For often, in that fight, the juſt and innocent are vanquiſhed, and the unjuſt and wicked are victors. Wherefore combatts are forbidden by the lawes of nations. The civill law doth not inflict a corporal paine in cauſes pecuniary, but puniſheth the offendor accordinge to the quality of the offence; therefore the civil law in ſutch caſes doth permitt no combatt which tendeth to corporall puniſhment; being contrary to the Lombard's law, which alloweth, and (as I take it) firſt invented combatts. The civil law, requiring proofe as clear as day, when the plaintiff cannot proove the cauſe, abſolveth the defendant. Therefore the civil law abhorreth combatts. For howe abſurd a thing is it, that the defendant ſhould bee forced to try his cauſe by force of armes, at the pleaſure of his adverſary, when he wanteth ſufficient proofe? Againe, whatſoever is doune for feare, is ſaide by the civill Pretoriane law, not to bee good; but when one provoketh another to combatt, in a cauſe depending in law, he putteth him in feare, whoe oftentimes for feare of future hurt letteth fall his right. Wherefore theſe combatts are not allowed by the civil law. Moreover the law of the emperor Conſtantine doth defend this concluſion, the woordes of which law are theſe: *Cruenta ſpectacula in otio civili & domeſtica quiete non placent, qùa propter omnino gladiatores eſſe prohibuimus.* And although this lawe ſeemeth ſpecially to tend to thoſe which were condemned to ſword play, and to fight with beaſts, yet the generality thereof may rightly be underſtoode of combatts; for ſo doth Oldradus de Ponte underſtand the ſame, with Jaſon and Bartholus.

Laſtly, Where the magiſtrate or judge may by his authority compound or end any matter, there combatt is not lawfull. But the magiſtrate may ende any matter without

oute ſufficiente proofe by compelling them to another, or elſe if there be no ſufficient proofe may abſolve the ſuppoſed guilty. This is the opinion of moſt of the canoniſts and civilians, as of Hoſtienſis, Bartholus, Petrus, Jacobus, and Cujacius, who calleth the law of the Lombards, to try all things by combatt, a moſt wicked law; yea, ſo mutch the lawes do lothe this kinde of triall, that it ought not to bee permitted by cuſtome, nor confirmed by any edict. Wherefore ſince ſpirituall lawes and temporall ordinances ſtand againſt theſe combatts, becauſe ſinne and offenſe ariſeth by them, and the damnation of the ſoule is often hazarded, they are wholly rejected.

N° XXXIV.

Of the ſame.

By Mr. JAMES WHITLOCKE.

22 May 1601.

COMBATS are diſtinguiſhed to be lawful and unlawful. Unlawful combats are thoſe that are fought by private men upon private quarrells ariſing upon poynts of honor or diſgrace, as they term them, of which one Vincentis Serviolo writeth, and theſe be naturally revenges, and not trialls.

Lawfull combatts are thoſe which are tolerated in the common wealth for triall of cauſes which cannot be diſcuſſed by any evidence on either part, theſe be called *duella, quaſi duorum bella*, and are thus deſcribed.

Duellum eſt ſingularis pugna quæ ſit propter probationem alicujus, ita ut qui vicerit probaſſe creditur, & victus in probatione defeciſſe. The effect and purpoſe of ſingle combat is not to decide or diſcuſſe, but to condemn or acquit by an accident. For if thear be any proofe it ſhall not be allowed, and it is called *purgatio* not *judicium*. For *judicium* is when the cauſe is diſcuſſed. *Purgatio* when the accuſation is avoyded by an accident on which the cauſe is put. For Bracton

our

our Engliſhe author ſaythe, lib. iii. c. 18. fol. 137. *tit. Corona.* that one ſhall not defend himſelfe by his bodie *quando aliqua violenta præſumptio facit contra ipſum.*

Theſe were called either *canonicæ purgationes* or *vulgares*; *canonicæ* were by oath, and ſo called becauſe they were according to law. *Vulgares* were either *per aquam candentem*, or *ferrum ignitum*, or *duellum*, and were called *vulgares*, becauſe they were brought in by the people without the precept of any law.

Theſe trials by combat were firſt brought into Italye by the Longobards, and ſuch people as were more addicted to martiall diſcipline then to civill government, ſince which times many conſtitutions have been made for the order and approving of them; and which conſtitutions are part of the civill law.

This kinde of triall is condemned by the canon law, and utterly forbidden for two reaſons alledged in it. The one *quia condemnendus ſæpe abſolvitur, abſolvendus condemnitur*, the other *quia Deus tentatur.* lib. 5. *Decretal. Le Purgat. vulgar.* ca. 1. et 2. fol. 311. *Decret.* 2. *pars.* c. 2. 94. c. *nemium* et c. *monomachiam.*

Theſe trialls in England have been either in criminall cauſes or in civill. In criminal, as in appeales of treaſon, felony, or manhim. In civill, either in the cauſe of honor and armes, or in Titles of land.

An appeal in a caſe of treaſon, was that between the duke of Hereford and the duke of Norfolk in Richard the Second's raign, which was to be tried by ſingle combatt at Coventry; but was taken up by the king in ſuch ſort as our cronicles report.

Trialls by combatt in cauſes of felony, are frequent in our law bookes, in appeales of murder and robbery.

Trialls by combat in cauſes civill, are thoſe that are either for honor or bearing armes, as that between Port and Sitſilte for the bearing of a coat armes in 6 Ed. 3.

Combats in ſuch civill cauſes are for the trial of titles of land, as in a writt of righte. The form of which kind of triall is ſet down in my L. Dyer 13 Eliz. to have been in Tuttle-fields, which cannot but be remembred by ſume in

this company. But the combat there was not performed, but a judgment given by default.

The ceremony of theſe combatts in ancient time was thus, if it wear a criminall cauſe his profer was, that he was *paratus defendere per corpus ſuum*, if in a civill *per corpus liberi hominis ſui.*

The ceremony of a combat in caſe of treaſon is largely ſet down in our cronicles in the 22 year of Richard the Second in the combat between Norfolk and Hereford, and therefore I will not deſcribe it.

Ceremony of combat in caſe of Felony 17 Ed. 3.

The ceremony of a combatt in a caſe of felony I finde to be thus, in 17 E. 3. the defendant with his left hand takes the plaintiff by the right hand, and holding it over a booke ſaythe: *Sir, you that are called by the chriſtian name of John, knowe that I whoſe chriſtian name is Thomas, did not ſutche a day and year, in ſutch a place kil your brother, nor am culpable of that felony, as God me help*, and kiſſeth the booke, *and this I will defend againſt you with my bodye as the court ſhall award.* Then the plaintiff withe his left hand taketh the deffendant by the right hand, and holdeth it over the book and ſaithe, *Hear you, Sir, that by name of Engliſhmen are called Thomas, you did felonioufly ſutch a year, day, and place kil ſutch a one my brother, by name, as God me help*, and ſo kiſſed the booke, *and this I deraigne againſt you by my bodye as the court ſhall award.*

The defendant was committed to the Marſhall untill the day of battail in criminall cauſes, and the plaintiff let at large and warned to come to the marſhall the nighte before the battail to be arrrayed, and this is thus defended in 9 H. 4. 3. Yet Bracton in the third book ca. 21 M. 3. ſaythe, that bothe plaintiff and deffendant are to be committed to the marſhalls after the battail waged, and ſo to be kept by them, that no man living ſpeak with ether of them. And when they are brought into the feilde to performe the battail, they muſt firſt take this othe: *Audite juſticiarij quod ego non comedi nec bibi nec aliquis pro me nec per me propter quod lex Dei deprimi debeat & lex diaboli exaltari; ita me Deus adjuvet.* This was to acquit themſelves from the ſuſpition of uſing any enchantments whiche

9 Hen. 4. Bracton 3 Lo. cap. 21.

which they mutch ſtood in awe of in that blinde age. After this the proclamations were made, and the battail joined. And in 9 H. 4. 3. the plaintiff had this advantage that his hed might be covered but the defendant's might not.

The ceremony of combat in civil caſes, as in a writ of right, is deſcribed in ſome ſort in 13 Eliz. in my L. Dyer, but not ſo amply as in 1 H. 6. 7. and therefore I will deſcribe it largely as it is there ſet down. After the combatt offered and accepted by bothe parties in a writ of right in the court of King's Bench, the champions of both parties caſt their gauntletts into the Court with a penny in every finger ſtall, which were taken up by the clerk of the Court, and the day of combat appoynted. Babington chief juſtice commanded the champion of the tenant to go and ſtand in the weſt end, and then bothe parties kneelinge on their knees before the juſtices, the chief Juſtice demanded of Strange and Paſton, ſerjeants of the parties on both ſides, if they would alledge any thinge why the champions ſholde not be allowed, and they anſweared no. Cokayne juſtice bid them ſee if they were ſound men. Then the clerk gave the gauntletts to Babington, who felt whether there were a penny in every finger ſtall, and then gave one to the champion of the defendant, and another to the champion of the tenant with the money in the finger ſtalls. Then did Babington chief juſtice demand of them, whether they would make battail. They anſweared they were content. Then they commanded again the tenant's champion to ſtand in the eaſt part of the court, and the defendant's in the weſt, and to lay downe their gauntletts again in the court. Then did the court demand of the ſerjeants at bar that were of counſel withe the parties, if there were any cauſe why they ſhold delay the battail? they anſwered, no, Then did the court call for the Champions again, and appointed them the day certain for battail at any hour of the day they ſhould then call for them, and gave one gauntlet with the money in it to one champion, and bad him go to Paule's Church, thear before the entrance of the north door to pray to God to give him the victory that had

right, and commanded the other to do ſo at the ſhrine of St. Edward at Weſtminſter. Then the tenant's champion was commanded to go out of the court at the eaſt end, and the defendants at the weſt; and that they ſhould not ſpeake or come neer one the other, untill they met to undertake the combat. This is the longeſt deſcription of the ceremony of ſingle combats in this our common-wealthe that I have read of, either in our hiſtory, or law books. And this we may obſerve in the order of it: that by reaſon of the religion they uſed in the performance, either had a confidence that God himſelf wolde be the mean that the victory ſhould be obteyned by him that had right. Thus muche I have obſerved, eſpecially of the uſe and ceremony of them, the diſcovery of the time of their firſt coming into this realm I can but geſſe at, and therefore will leave it to them that have better inſtruction of it.

N° XXXIV.

Of the ſame.

By JOSEPH HOLLAND.

May 22d, 1601.

TRYALL by battle if it be for title of Lands, then it is att the election of the tenant, either to have it tryed by the grande aſſiſe, where there muſte be foure knightes of the Jurye; or elſe to have it tryed by battle, in which caſe he ought to have his champion alwayes readye, as appeareth in *Natura brevium*. And ſo was the order in old tyme when theſe tryalles by battle were in uſe, as appeareth by an indenture bearing date xlij Henry iij. wherein the champion for the abbot of Gloſſenbury was bound by indenture to be always in a readineſs to fight againſte the champion of the dean and chapter of Wells, for the right which the abbot did pretend to have in three lordſhips: alſoe the wages of the champion is ſett downe in the ſaide deed, and the Mannor of his habite uppon the ſeale. The original deed I gave unto the right honourable the lord cheefe juſtice of England. But I have a faire copie thereof ready

ready to be ſhewed unto you : his apparell, as appeareth in *Natura brevium*, ſhall be of white Leather, his coat ſhall be of red Sandale painted with the arms of his maſter, if he have arms, and a knight ſhall bear his ſtaffe, and a varlett his targett, which ſhall be four corner'd, and of the cullor of his coat ; and the juſtices ſhall ſee that the ſtaves ſhall be of one length, and their targetts of one breadth, and the champion ſhall have his head, his hands, and his feet bare.

It appeareth in the pleas of the crown, that 19 Henry 6. in an appeal of felony, that the batle was fought, and the defendant thrown to the grounde, and extreamlie beaten. Whereupon the juſtices ſent for him and demannded of him if he would fight any more, he anſwered no ; but ſaide that by the oath that he had taken, he was not guilty ; the juſtices anſwered, that if he would fight again, he muſt be put in the ſame degree that he was in when they ſent for him, and he anſwered that he would not fight ; whereupon he was hanged incontinently.

But if tryall by batle be in a cauſe of treaſon, then the tryall ſhal be before the conſtable and marſhall of England, and not before the juſtices, as appeareth by the booke 37 Henry 6. But at the combatt appointed to be fought betwen the dukes of Hereford and Norfolke, 22 Richard 2. the king himſelf was preſent: where the twoe dukes beinge ſommoned by an Herauld to appeare before the kinge, there ſtood forthe a knight, and aſked and obteyned lycence to ſpeeke for the duke of Hereford, and ſaide ; Right deare and ſouveraigne lorde, here is Henry of Lancaſter, duke of Hereforde and earle of Derby, who ſaith, and I for him likewiſe ſay, that Thomas Moubray, duke of Norfolk, is a falſe and diſloyal traytor to you, and to your royal majeſtye ; and moreover the duke of Hereforde ſaith, and I for him do ſay, that he will prove this with his body againſt the body of the duke of Norfolk within liſts : and ſo likewyſe there was another knight that ſaid the like on the behalf of the duke of Norfolke againſte the duke of Hereford. Whereupon the day for the battle was appointed, and

when they were both ready to fight, the kinge ſtayed the combatt, and did baniſhe them both.

Kinge Henry the fifth at the beſeiginge the town of Meluns in Frannce, made a greate mine under ground, and they within the town made a counter-mine: one day the kinge of England enterred the mine, and fought with the lord Brabaſon, governor of the town, and after long fight they agreed to diſcover their names, ſo that the governor would firſt diſcover his name, and ſoe they departed for that time.

Afterwards the town was yielded upon condition that all that were conſenting to the death of the duke of Burgoin ſhould be delivered to the king of England, of whom the lord Brabaſon being one, had been put to death; but he appealed to the judgement of the officers of arms, alledging that by the law of arms, no man having his brother in arms, in his danger, afterwards ought to put him to death; and ſhewed that he was the king's brother in arms, and that he had fought with the king within the mine, which combat was thought of equal force by the heralds, as if he had fought with the king body to body within ſolemn liſts.

A combat was fought in Smythfield within liſts, before the king 21 Henry 6. between the lord Beawfe of Aragon, and John Anſley an eſquire of the king's houſe, which Anſley had the victory, and the king made him a knight, and the lord of Aragon offered his arms at Windſor.

25 Henry 6. John Daind accuſed his maiſter William Catur armorer, dwelling in St. Dunſtan's pariſh in Fleet-Street of treaſon; and a day being aſſigned them to fight in Smythefelde, the maiſter being well beloved, was ſo cheriſhed by his friends, and plyed with wine, that being therewith overcome, he was ſlain by his man.

For the antiquity of combats, I find that they have been in uſe long before the laſt conqueſt, and that two kinges fought a combat for this kingdom: firſt they fought on horſeback and afterwards on foot; in the end they agreed to divide the realm between them.

In

In the time of king John there was one came out of France unto the king's court, and required combat for tryal of the king's right unto the dutchy of Normandy. And although it was not thought expedient to hazard ſo great a title upon one man's fortune, yet it was thought fit, that he ſhould be fought withall; and therupon choice was made of an Iriſh Earl, being then a priſoner here in England, whoſe name was Curſye; but after the Frenchman had once beheld him, he went away privily, and durſt not appear at the day appointed. The ſtory ſheweth that the king made tryal of Curſey's ſtrength, by ſtriking at a helmet; when Curſey in preſence of the king, ſtruck through the helmet ſoe farr into the block whereupon the helmet was put, that none preſent could pull it out but he himſelf.

Froiſſart ſheweth a combat on horſeback, between a knight of England and a knight of France, in the time of king Richard 2. which grew upon this occaſion. Sir Peter de Courtney, a knight of England having been at the court of France, and having the ſafe conduct of the king, there was a knight of France named de Clary, appointed to accompany him until he was entered into the marches of Calais. By the way Sir Peter de Courtney went to ſee the counteſs of St. Pawlieſe, daughter of Sir Thomas Holland, and the king of England's ſiſter by his mother, and in talking with the counteſs, he ſaid, that he did like well of the court of France, but he came out of England to do ſome feats of arms, but he found not any to encounter him; which words were taken in ſuch evil part by the French knight, that immediately after they came unto the marches of Calais, they appointed a day to meet armed on horſeback, to fight for the honour of their countries. In which combat Sir Peter de Courtney was ſore hurt, and the knight of France was put in priſon, and had liked to have been baniſhed, becauſe the words were ſpoke by way of talk unto a lady, and not ſpoke unto a knight.

N° XXXV.

Of the ſame.

By ANONYMOUS.

BEFORE we come to the fullneſs of our queſtion of combats conſiſting of fight, it ſhall not be impertinent in my conceit to diſcourſe of things from the ſhell, as the proverb is; and before we treat of the matter and manner of combats, to ſpeak ſomewhat of fight, which is the very eſſence of combat; becauſe there can be nothing more excellent or profitable for knowledge and memory, then a naturall and orderly method of diſcourſe. For as Baldus ſaith in the proem of the digeſt, *Per ordinem, intellectæ res magis delectant animos, mentes magis nutriunt, ſenſus magis illuminant, et memoriam reddunt clariorem.* Wherefore the law of method doth require, that the moſt common and general things ſhould be firſt ſpoken of, for the ignorance of them will hinder the knowledge of the ſpecialities. Now amongſt the variable axioms of each thing, nothing is more needfull then the definition of the ſame, which as a light doth ſhew the way to the true knowledge of what the thing is, whereof we entreat. For which cauſe, ſince we determine to ſpeak of combats, and not of fight in general, it may ſeem to ſome, that we juſtly might pretermit any diſcourſe or definition of this general *pugna* or fight, and only ſpeake of the particulars. But becauſe the knowledge of what fight is, will be a help to the following matter, we will not forbear to make our entrance there withall, and define *pugna* or fight to be an act in which two adverſe parties contend for victory. This contention or fight is either that which is commonly called wars in general, or that which now we have in hand, ſpecial combats. But becauſe we are not to ſpeak of wars, as war called *bellum*, is univerſally taken, but of combats, whereunto we are eſpecially limited, I leave all general warre, and only ſpeake of combats called *Duellum* or *ſingulare certamen*:

for

for both words are mightily confounded both by divines and lawyers, ſince in truth they be two diſtinct things, if we will draw them to their time and proper nature, although *duellum* of right is *parvum bellum*; and in old time that was called *Duellum*, which we now call *Bellum*, as appeareth by Horace, when he ſaith, *Grecia barbarie lento colliſa Duello.* And Livy in his firſt book and firſt decade deſcribing the ancient manner of proclaiming war, ſaith, *Puro proque duello querendas cenſeo*; but now by received uſe they are diſtinguiſhed, and *Bellum* is one thing and *Duellum* quite another, and of one other nature; the diſcourſe of which *Duellum* ſhall contain ſomewhat of the ſeveral names belonging to combat: of the antiquity of the difference between war called *Bellum*, and combatte called *Duellum*: of the definition of combat of the diviſion: of the form, and of examples thereof, (which plentifully adorning our hiſtories ſhall be ſprinkled here and there as the progreſs of this treaty ſhall require): and laſtly, of the taking away, or forbidding of them.

Firſt, the ſeveral names of combat as they be now in uſe, are *Monomachia* taken from the Greek, and *Duellum* or *ſingulare certamen* uſed by the Latines; which, though they be now taken in one ſenſe, yet are different as I ſayed. For *Duellum* may be a conflict of divers perſons, at once, as well as of two ſingle perſons, as after ſhall appear; when *Singulare certamen* can only be of two perſons, and no more.

For the antiquity of combats, I find none more ancient then that amongſt the Hebrews, of David and Goliath in the firſt book of the Kings; amongſt the Grecians that at the ſiege of Troy, of Æneas and Diomedes; that of Paris and Menelaus; and that in the camp of Alexander, between Droſippus and Carragus; amongſt the Romans, that of the *Horatii* and *Curiatii*; and that of Edmund Ironſide and Canutus the Dane amongſt the Engliſh Saxons. So that I cannot yield to thoſe which attribute the invention of combats no higher then to the Huns and Lombards about ſome 400 years after Chriſt; unleſs you will ſay that the

Lombards were the firſt that invented theſe combats for trying out the truth of any matter; when the combats before that were rather for victory and honour then for ſuch tryal: thoſe Lombards being in truth the firſt that delivered any laws thereof. For the ancienteſt laws that ever I could yet ſee touching combats, are thoſe which are intituled, The laws of the Lombards, which I have in French of great antiquitie, and are by the Civilian Cuiacius, and many others called wicked laws.

For the difference of *Bellum* and *Duellum*, I find ſomewhat ſet down by the Civilians, and eſpecially Henricus Bocerus Salcatinus, whom I moſt favour, leaving Alciate, Bartholus, Paris, Hoverius . . . . . Cagnotus Vaſqius, and all others writers of *Duellum* or *Singulare certamen*, becauſe I ſee their definitions of *Duellum* are not ſo perfect as that of Bocerus, as I will hereafter ſufficiently prove in this following ſpeche. The difference then between *Bellum* and *Duellum* is principally in the form and accidental parts, for in many things they agree, as in the ſubſtance, the effects, and many cauſes: for as fight is the ſubſtance of the wars, ſo is it of combat; and as victory is the end of the one, ſo is it of the other, and the things which occaſion *Bellum* may alſo be the cauſe of *Duellum:* ſoe that agreeing in many things, they principally ſeem to differ in form and number of perſons. For war properly conſiſteth of one army or hoſt of men fighting for victory; but ſo doth not any kind of combat; for it cannot be called *Bellum*, unleſs it have *exercitum*. Now *exercitus* or one army doth conſiſt of one whole collection or aſſembly of ſoldiers, called *Exercitus ab Exercitatione*, becauſe the number of ſoldiers, as Vigetius writeth, are in continual exerciſe, whereby, as Varro noteth, they be made more apt and ready to fight; that one army doth comprehend one infinite number of ſoldiers, the name of *miles* or ſoldier and the notation thereof beſides other things, abundantly prove, becauſe he is called *Miles, quaſi Milleſimus* or The thouſand Man. For as the Civilians alledge, that each tribe *ſingula milia militum in bellum mittebant*, according to he ſaying of Franciſcus Conanus and Varro,

Varro, ſo Ulpianus deſcribeth *exercitum* to be *non unam cohortem neque unam alam ſed numeros multos militum, nam exercitui preeſſe dicimus, qui legionem vel legiones cum ſuis auxiliis ab imperatore commiſſas adminiſtrat.* And the gloſs addeth that there be ſix legions in one army, and every legion containeth 7100 footmen and 7030 horſemen, ſo that without an army it cannot properly be called war. But combat doth not conſiſt of any ſuch army or number of men, but only of ſome few, as three, four, five, or ſuch like, or of two at the leaſt: whereby in form and number they are different from *Bellum* or war; and ſo to the definition of *Duellum* according to Bocerus Salcatinus.

Duellum, ſaith he, *eſt pugna duarum partium citra formam belli dimicantium*; *idque ſi duo tantum manus conſerant, ſingulare certamen vocant*; whereby he learnedly ſheweth: Firſt, that combat is *citra formam Belli*, not like to the form of warre, and that combat doth not only conſiſt of fight of two perſons, which is *ſingulare certamen* or ſingle combat, but is alſo a fight or contention conſiſting of more perſons, and therefore hath not that name of *Duellum, quaſi duorum hominum bellum*, but *quaſi duarum partium Bellum*, for ſo was the fight of the three brothers of Horatii and Curiatii amongſt the Romans, where they were three to three, being a combat for dominion over the Albans. So during the wars of Richard the firſt between England and France, the French king ſent to king Richard to appoint a combat of five champions, and he would appoint five others for his part, which might fight in liſts for tryal of all matters in controverſy betwixt them, to avoid the ſhedding of more guiltleſs blood. King Richard accepted the offer with condition, that either king might be of the number, but the French would not grant. Again Edward the third being at Calais, the conſtable of France and other Frenchmen came to the cauſey of Calais, with letters of credence, offering battle to the king of England in the preſence of the dukes of Lancaſter, the earl of Northampton, and the lord Walter Mannye; who in the king's behalf deciared to the conſtable, that the king of England to eſchew ſhedding

blood, would fight with the French king body to body to try the right, and if he liked not that match, then if he would chuſe three or four knights that were neareſt to him in blood, the king of England would chuſe the like number; but this offer was alſo rejected. Laſtly, the duke of Orleans brother to the French king, made a proud challenge to king Henry the fourth by his letters, that they both might meet in the field each part with an hundred armed knights and ſquires, both of name and arms to combat to the yielding, and the victor to have his priſoner, and to ranſom him at his pleaſure. In which hiſtories you ſee that combats conſiſted of more than two perſons, and therefore is rightly defined to be *Pugna duarum partium citra formam belli*, comprehending divers combatants.

But to leave theſe examples, and to prove this definition of Salcatinus to be a ſound and better definition then thoſe of the other civilians which have ſet down but maimed and imperfect definitions, we ſay that one of them defineth *Duellum* to be *Pugna capitalis deliberata hinc inde duorum ad purgationem vel gloriam conſequend.* But this definition halteth as well for that combat conſiſteth of more than of two perſons, as before I have ſaid; as alſo for that it is not always a capital fight; as when learners do make challenges and combat for exerciſe of martial feats. And further, every combat is not made for cauſe of purgation and glory, but ſometimes for wicked gain, as we ſee in the challenges of maſters of fence and ſuch like. Cagnotus defineth combat to be none other then a fight of two parties contending for victory: but here is no reciprocation of the definition with the thing defined, and therefore cannot be accounted perfect; for warre is alſo a fight of two parties contending for victory. To conclude, Fernandus Vaſquius defineth *Duellum* to be *Nihil aliud quam ſingulare certamen aut pugna equis legibus dimicantium*, becauſe all combators are not ſingular combators; for a combat may conſiſt of more than two, as Vaſquius himſelf in the ſame chapter hath noted. And again all ſingular combators do not fight with equal laws or conditions; for when one thief aſſaileth a true

a true man, which is a ſingle combat or fight, they fight not with equal conditions; ſo that the ſame definition of Vaſquius concerning combats or ſingle fight is alſo impertinent; for which cauſes as I ſaid, I had rather follow the definition of Salcatinus then of the other.

After the definitions of combat, we are to proceed to the diviſion, which is, that all combats are either judicial or unjudicial, and beſides judgement.

Judicial combats are thoſe which are appointed and allowed by the authority of the judge, in controverſies when other ſufficient proofs are wanting for ſearching forth of the truth, ſoe that the cauſe of the vanquiſhed is the worſt. For the better underſtanding of this it is to be known, that theſe kinds of combats, which are for the moſt part ſingle combats, conſiſting of two ſingle perſons, are a certain kind of proof or tryal, and defence of the matter by the body of the complainant and defendant: ſuch a combat was under Otho the firſt, beſides Trevers, between the uncle and the nephew, for the right inheritance of lande, and ſuch a combat in Tuthilfeild did I behold in our time, in the 13th year of queen Elizabeth about lands; whereof Simon Lowe was plaintiff, and Thomas Paramour defendant, the manner whereof, being worth the reading, is ſet down by our fellow antiquary Mr. Stowe in his annals. Likewiſe in the 1ſt of Henry 6. is the ſame order of combat delivered, whereof alſo there is plentiful mention made in Bracton *libro tertio de corona cap.* 21. *in Brittone fol.* 14. and in the year book of 17 Edward 3. folio 2. in 29 of Edward the 3d, in the 9th of Henry the fourth, and in Brook's abridgement: whereunto I referr you, not meaning to be tedious with the repetition of them at large, becauſe our learned lawe antiquarians here preſent, well can and will, I doubt not, fully delineate the ſame unto you.

Unjudicial combats beſides judgement, are ſuch as the parties themſelves do take in hand by challenge beſides, or without the authority of the judge, which are of two kinds; that is either for the publick good, or for other cauſes then the publick good; combats for the publick good are either for the

common-wealth of our country, or for the ſtate of religion. Which combats only are lawful, as Salcatinus ſayeth; and conſiſt in a double difference; for either they are directly for the common good, or conſequently, or by degrees for the common good. Combat directly for the common good, is that which immediately ſeeketh the common good, either in ſuccouring the decaying common-wealth by avoiding of further bloodſhed in battle, or that which is performed with any traitor to the common-wealth. That for ſuccoring the common-wealth in avoiding of bloodſhed, is ſuch as was the combat of David and Goliath amongſt the Jews; that of the Horatii and Curiatii amongſt the Romans: and likewiſe of latter time, ſuch as were for the tryal either of right or ſuperiority of title to any territory; which either king, prince, earl, baron, or lord taketh in hand with one another of like eſtate, for the title or defence of his dominions; as was the combat of Charles of Arragon and Peter of Terracon, recited by Alciate in the 3d chapter *de ſingulari certamine*. For when they had long warred for the iſle of Sicely, at length they agreed by authority of Martyne Biſhop of Rome, and the colledge of cardinals, to determine the ſame by combat at Burdeaux in Aquitaine, where they confirmed by oath that the vanquiſhed ſhould depart and never make a claim to the iſle. Such alſo was the combat between Edmond Ironſide and Canutus the Dane for the kingdom of England, in the iſle of Olney, in the river of Severn, with condition that whether of them chanced to be victor ſhould be king, and the other to reſign his title for ever into his hands. Of which combat ſome ancient authors treating of thoſe tymes make no mention, but ſay that Canutus and Edmond fell to compoſition upon refuſal of the combat by Canutus, as hath William of Malmſbury: ſuch alſo was the combat before-mentioned by king Edward the third, offered to the French king for tryal of king Edward's right and title to the crown of France. So in like manner it is, when any private ſoldier by the favour of the general, for without his permiſſion he may not do it, doth with equal conditions combat with a

ſoldier

ſoldier of the adverſe army for the publick good; thereby to encourage the army of the victor, and to fear the army of the party vanquiſhed. Which kind of combats are oftentimes committed by the ſoldiers of the bordering Chriſtians of Hungary, and thoſe parts with ſome Turks: the manner of the combat, and the kind of weapon being firſt appointed. To ſuch combats for the publick good, are thoſe alſo to be compared which are made with traitors to the commonwealth, when one accuſeth one other of treaſon. As is that in the time of Henry 2. For when the king ſought to repreſs the rebellious attempts of the Welchmen, he and his ſoldiers were at the firſt approach to the Welch country, ſet upon in the Straits and ſorely repulſed, whereby rumour was ſpread that king Henry was fled and ſlain, which falſe report ſo diſcomfited the king's ſoldiers, that Henry of Eſſex which bare the king's ſtandard by right of inheritance, threw down the ſame and fled; which diſhonourable doing was layed unto his charge by Robert de Mountfort, who accuſing him of treaſon, fought a combat with him in tryal of the quarrel, wherein Henry of Eſſex was vanquiſhed and forfeited all his lands to the king.

In the third year of Richard the ſecond, a combat was fought before the king's palace at Weſtminſter, betwixt Sir John Aneſley, knight, and Thomas Katherington, eſquire, in which the knight accuſed the ſquire of treaſon, for that where the fortreſs of Saint Salvoure within the iſle of Conſtantine in Normandy, and which belonged ſome time to Sir John Chandos, had been committed to the ſaid Katherington, as the captain thereof to keep againſt the enemy, he had for money delivered the ſame to the French, when he was ſufficiently provided of men, munition, and victuals to have defended it againſt them; and for which he appelled him of treaſon: the combat was fought, and Katherington vanquiſhed. The form of this combat is ſet down in our hiſtories.

In the eighth year of Richard the ſecond, during the parliament, a combat was fought within liſts betwixt an Engliſh ſquire called John Welſh, and a ſquire of Navarre

that

that accuſed the ſaid Welſhe of treaſon. But the Navarois being vanquiſhed, and confeſſing the truth, was adjudged by the king to be drawn to the place of execution and hanged.

In the twenty-firſt year of king Richard the ſecond, the duke of Hereford and the duke of Norfolk accuſing each other of treaſon as perſons diſloyal to the king, and enemies to the realm, the combat was granted. But when they were in the liſts to have determined the battle, the king took the matter into his hands, and baniſhed both the dukes. The honourable order and form of which combat is liberally ſet down in our chronicles. Theſe common examples, amongſt many others I have collected out of our hiſtoriographers, becauſe they concern combats immediately, and directly implying the publick good, in that they ſeek to ſet forth traitors as hatefull enemies to the common-wealth.

The combats which conſequently or by degrees concern the publick good, are ſuch wherein men prepare and exerciſe the force of the body and mind in martial and military functions; as in tilts, tournaments, barriers, and ſuch like, exerciſed either for the continuance of their activity, or for learning ſake; both which in times paſt were done with ſharp weapons indangering the combaters; but by reaſon of inconvenience, and murder which grew thereupon, they were forbidden to be ſo uſed in that manner, as after ſhall appear.

For in the exerciſes of activity, Gilbert Marſhall, earl of Pembroke, 28 Henry 3. in a tournay which he attempted at Hereford, without the king's licence, was by an unruly horſe caſt, and ſo hurt that immediately he died thereof; thus alſo Sir Arnold de Monteney was ſlain by Roger Lewborne in a tournay holden at Walden in the 36 year of king Henry the third.

In the 13th Richard 2. John Haſtings, earle of Pembroke, as he practiſed to learn to juſt, through miſhap was ſtriken into the privy-parts by Sir John Saint John, which came againſt him, ſoe that his inner parts being periſhed, death preſently followed. Therefore in our age, theſe

combats are exerciſed by the rebated weapons, with more delight in ſhew, then danger in acting. Thoſe combats which by degrees concern the publick good, are either publick or private: publick combats are ſuch as when the combat is appointed by publick edict of the magiſtrates, whereby men prepare themſelves to that kind of fight; for without the king's licence it was not permitted to any to take ſuch combats in hand, becauſe it was lawful for them without danger of law following thereof, to kill any man in thoſe combats; wherefore ſuch combats were not allowed but by the king's precept; for if theſe tournamenting combats were otherwiſe taken in hand, as they were many times, they were holden a certain kind of rebellion, becauſe under colour of doing feats of arms, they made many aſſemblies of armed knights and gentlemen to conſpire againſt the king, to revenge ſome quarrel, or to aſſiſt ſome other faction, whereby they diſturbed and endangered the common wealth: but hereof we will ſpeak more in diſcourſing of private combats. For the confirmation of ſuch kinds of publick combats, as we find many examples, ſo this one ſhall ſtand for all at this preſent. Richard the firſt in the ſixth year of his reign, by his charter dated the 22d day of Auguſt, granted that tournay and tournament ſhould be exerciſed between Salisbury and Wilton, betwixt Warwyke and Kenelworth, betwixt Barkeley and Muxburgh, and betwixt Blye and Tickhill, for the better training of men of arms in feats of war, that they might attain to be more ſkillfull in the ſame when they ſhould come to the tryal of their forces; which tournays were yet ſo limited, that neither the king's peace ſhould be broken, nor the authority of the juſtice diminiſhed, nor any damage done to the forreſt; and that every earl that ſhould tournay, ſhould give to the king xx marks, every baron x marks, a landed knight iiij marks, and one unlanded knight ij marks; adding further, that no ſtranger ſhould be admitted to that tournay. Thus much for publick combats of exerciſe.

Private

Private combats of exerciſe are thoſe which are aſſumed of private conceit without the authority of the magiſtrate; as was that of Gilbert Marſhall before recited, and of others which attempted the like without the king's licence, when under the colour of tournaments, they called a power as I before ſaid to revenge ſome private injury, to maintain the quarrel and factions of ſome of their complices and friends, to levy war againſt the king, to put the realm into hurly-burly, to break the king's peace, or to do ſome other unlawful act; as may be partly proved by the tournay holden at Brackley, and by ſome at Barkeley in the 32 of Henry 3. where the earl of Glouceſter favoured the part of the ſtrangers, whereby they prevailed againſt his countrymen, and did much hurt to the adverſe part. Such kinds of aſſembly the kings of the realme have always forbidden; for when in the 28th of Henry 3. a great number of lords, knights, and gentlemen were aſſembled together at Dunſtable and Layton, there to have kept a marſhall juſt and triumphant tournay, they had a countermand from the king whereby they were diſappointed of their purpoſe. And in the 30th of Edward 1. as appeareth in the records of the Tower, the king by his writ dated the 16th of July, and by proclamation, forbiddeth juſts, barriers, and other warlike exerciſes which young lords and gentlemen had appointed for their paſtime in divers parts of the realme. Thus much for all kinds of combats concerningthe publick good; and ſo to unjudicial combats which are not taken in hand for the common-wealth ſake.

Forbiding of Tournament.

Theſe combats are either for virtue's cauſe, or for cauſes, alienated from virtue: ſuch as are done for virtue's cauſe, are ſuch as are done for the obtaining of honeſt glory without meditation of the death of any party; as be the combats of ſuch as would learn martial feats, and as be the tournaments of princes, earls, barons, and noblemen in our ages, with rebated weapons; though in times paſt and of late years ſome of them were in like ſort done with the ſharp, as I ſhewed before, and will a little here touch, in two examples of combats performed only for glories

glories cauſe. In the ſecond year of king Henry the fourth there were two ſtrangers, the one a Frenchman, the other an Italian, requiring to accompliſh certain feats of arms againſt Sir John Cornewayle and James de Artois: their requeſt was granted, and the ſtrangers were put to the worſt; whereby Sir John Cornewayle ſo far forth obtained the king's favour, that he married the king's ſiſter, the widdow of John Holland earl of Huntingdon. In like manner in the 7th year of Edward 4. the baſtard of Burgundy coming into England to conclude a marriage between earl Charolus his brother, who was afterwards duke of Burgundy, and Margaret ſiſter to king Edward the 4th, he did for glories ſake after the marriage was concluded, challenge the lord Scales, brother to the queen, to fight with him both on horſeback and foot; which the lord Scales accepted, and the combat was performed to the honour of the lord Scales. At the ſame time alſo, other challenges were done by the Engliſh for the ſame cauſe.

The combats alienated from virtue are thoſe which are done for vain oſtentation; as when one entereth into combat for money, as doth the maſters of fence playing their prizes; this did Neylor the fencer, champion of Simon Lowe in the 13th of Elizabeth, for the lands in controvercy between him and Parramoure, where Neylor, when the matter was taken up, would needs challenge Thorne the champion of Parramour to fight there within the liſts for oſtentations cauſe, and to try what either could do. Further, of this kind are ſuch combats as are done for fooliſh defence, as they term it, of their honour, when they are affected with verbal injury, as to fight for the lye and ſuch like. For although we ſhould as much defend our credit and good name, as our life and living, yet to do it upon every wronged ſpeech, eſpecially where law or reaſon may determine, it is mere folly, and not to be permitted. For never, or very ſeldom would the common-wealth be in quiet, which always, and by all means ought to be preſerved, if it ſhould be lawful for men, ſo often as they be injured by words, to challenge the combat; for ſo daily murders and

miſchiefs would ariſe thereof, which the quiet of the common-wealth ſeeketh to avoid. But we will not further meddle with thoſe things, but leave them to men of better diſcourſe and judgement, wherewith we end the firſt diviſion of combats, ſince we muſt again make a ſecond ſub-diviſion of them in this ſort.

All the former combats are either combats capitulated and drawn into articles, or combats unarticulated, but left to the orders and decrees of the martial law and cuſtoms of the country.

The combats capitulated are thoſe wherein are ſet down, by the conſent of both parties, divers articles or conditions concerning the manner of battle; which articles both the parties are ſtrictly bound to perform: for which of them ſoever ſhall fail therein, ſhall be judged to be vanquiſhed; the manner of ſuch articles we will for brevity omit. The combat unarticulated is that which we call combat, *a tout entrance*; wherein we comprehend no other conditions but ſuch as the laws and cuſtoms of the nation, with the precepts and decrees ſet down in the martial and civil laws, have tied them unto.

Touching the formes of combats; they are divers according to the cuſtoms of divers countries: for in foreſcall cauſes, or in pleas holden in the national and courts of juſtice in England, the combats differ in form from thoſe of the martial and civil laws of the emperor and of other nations. For the combat permitted in the king's-bench for the trial of capital cauſes, as felony, murder, theft, and ſuch like, differ from thoſe of the court of the common-pleas in cauſes real and of mere right, as the legiſtes term them; the form of which are to be ſeen in the law books before recited.

Both thoſe forms of judicial combats be again different from that kind of combat which the martial and civil laws allow. Thirdly, the manner of combats here in England of the martial's court, are in many points different from the form of the combats of the civil law, as to the diligent obſerver may appear in the Glory of generoſity, written by

by Mr. Fern; in the Honour of arms, written by Mr. Thomas Beddingfield, and in the hiſtories of our own nation, and other ancient written forms of combats in French, whereof I could ſet down the examples remaining with me, but that they would be over tedious for me to write, and you to hear at this time.

To conclude: The laſt of thoſe things whereof I mean to intreat (for of all other matters belonging to combats directly or indirectly with all circumſtances, even to the laſt note Mr. Ferne in the book before recited in his 10, 11, 12, 13, and 14th motives hath ſo liberally diſcourſed, as he ſeemeth to have left nothing for any other to handle) I ſay, that conſidering the many inconveniencies which did grow by combats, tornements, barriers, and ſuch like performed by the ſharp, eſpecially of ſuch combats as were judiciall, they were and are utterly forbidden by all laws divine, canon, civil, and national, and laſtly by decrees of general councels; the juſt abrogating whereof we could ſufficiently prove by many arguments, which I forbear at this time, and will only deliver unto you ſome few authors condemning combats and tournaments. The firſt concerning the fruſtrating of tournaments is that which is recited by Mathew Paris and Hoveden in ſetting down the counſel of Rome holden at Laterane under Alexander biſhop of that ſee, A. D. 1179, in the time of Henry the Second, where this canon is delivered, reciting the condemnation thereof in the time of his predeceſſors Innocentius and Eugenius. The words of the counſel, as hath Hoveden, are theſe, *Felicis memorie pape Innocentii & Eugenii predeceſſorum noſtrorum veſtigiis inherentes, deteſtabiles nundinos vel ferias quas vulgo torneamenta vocant, in quibus milites ex dicto convenire ſolent & ad oſtentationem virium ſuorum & audacie congrediuntur, unde mortes hominum & pericula animarum ſepe proveniunt, fieri prohebemus. Quod ſi quis eorum ibi mortuus fuerit quamvis ei penitentia non degetur, eccleſiaſtica tamen careat ſepultura.* This much that counſel. The other authority thereof is the laſt Counſell of Trent holden in our time; which in the 19th canon of the ninth ſeſſions

under the title *decreta reformalis generalis* doth ſay, *Quicunque duellum conceſſerit excommunicetur*, which taking away all grants of combat by way of excommunication of him that granteth them, doth likewiſe take away all the means to perform the ſame. For as the law ſaith, *quum aliquid prohibetur quodam jure, videtur etiam prohibitum omne id per quod pervenitur ad illud.* And ſo I conclude this tedious diſcourſe.

N° XXXVI.

Of the ſame.

By Anonymous.

Libro Geneſis. WE may read of the firſt unlawfulneſs to kill any man, and what horrible judgements and puniſhments came upon Cain for the murder of his brother Abel. Yet many examples have enſued to tolerate ſome ſlaughters, as that of Phineas and others; and infinite are thoſe for the allowance of theſe combats, even in the beſt and renowned nations, namely amongſt the Iſraelites the peculiar people of God. As for inſtance, that of David and Goliah: and that deſperate encounter of 12 ſtout men commanded on the part of Moab againſt 12 of the part of Abner, which killed each the other with their ſwords at their captains commandment, Libro Regum 2°. cap. 3tio.

Omitting the times of the Aſſyrians, Perſians, and the Greeks, we muſt reſtrain our diſcourſe ſomewhat to the Roman hiſtories of the Horatii and Curiatii Tergemini. Their combat is known to us, and the fame thereof hath been ſo divulged in the time of that monarchy, that the form therein hath been obſerved and generally practiſed throughout all their dominions, as accompted moſt valiant and lawful in caſes for trial of truth, right, and honour (now aboliſhed) by the ignorance of the juſt cauſes and right proceedinge thereof. For we find examples by good record

record of combats practiſed before many princes in ſundry kingdoms and nations, as alſo how noble and valiant men were armed with weapons convenient for them, after their uſe in military profeſſion, with ſpear and ſhield, and ſwords of ſteel, cutlaſſes, battle-axes, &c. and how the baſer ſort of people, after their manner clad in leather, with batts in their hands tipped with horn, and pelts of leather for their ſhields, fought at oulterance for trial of cauſes in queſtion for lands. The firſt I refer to the better and more particular declaration of Mr. Agard out of the Records in the king's majeſties Exchequer, tempore Regis Henrici 3. and the other, as to Mr. Holland hath beſt informed, nothing doubting of the ancient uſe and manner of combats in England before the time of the conqueſt, as hath been related. This I noted, that Mr. Holland hath delivered, that the common law did not take notice of that proceeding for combat between the B. of Bath and Wells, &c.

Further I muſt remember you that Sir William de Grandſon, ſometime lord of the manors of Dymok and Mancheſter, and half the lands of Evias, being deſcended of high parentage, in the time of king H. 3. went with Sir Edward the ſon to the ſaid king to the wars in Paleſtine, where being choſen by the prince and army of the Chriſtians to fight a combat with a principal Pagan at Burgh de Ponk, he obtained the victory. It is reported of him how that he brought a piece of the croſs, which he gave to the abbey at Dore where he was nobly entombed.

Omitting other hiſtories or tales of combats, I find, that only the kings of England have by their conſtables, and the marſhal ordered and allowed all combats, and not the common lawyers. This appeareth by the particular articles written in a book which I have, and which doubtleſs was made in the time of king Edw. 3. wherein is this ſpecial title, *Modus faciendi duellum coram rege*; the articles are many and too long to repeat.

Again, I will not particularly mention the acts and combats practiſed in the time of king Rich. 2. neither the challenges ſent and offered by the ſaid king and his three uncles

to

to fight againſt the French king and any his three aſſociate princes.

In the time of king Henry the ſixth, amongſt many like exerciſes of arms performed by valiant Engliſhmen, and permitted by thoſe famous princes, the protector of England and the regent of France, I find the feats of arms accompliſhed by Sir John Chalons, knight, borne in England againſt Lewes de Beul holding the part of king Charles of France, and which were performed at Tours in Tourrayne before the ſaid king Charles as judge, accompanied with the queen his wife, many notable princes and ladys, archdukes, earls, barons, knights, &c. But the proceſs thereof would be too tedious to enter upon at this time. And as to the others expreſſed in the calendar of the aforeſaid books of combats by Engliſhmen, I muſt relinquiſh them.

Piers de Matley, the earl of Warwick. Lo. Scales, &c.

I read of one notable caſe of combat made between two knights, caſtellanes in Spain, in the time of Alphonſo de Caſtella father to Don Pedro; the one called Ruy Payez de Viedina and the other Pay Rodriguez de Avila, for certain words ſpoken againſt the king. Which combat continued three days; and on the third day the king took up the cauſe and received them both to grace and to their honour. This fact of arms, by the diſcourſe of the hiſtory is famouſly related as a moſt ſingular and brave paſs of arms.

Two knights of Caſtella.

Theſe examples and proofes cauſe me to think that theſe actions of Arms do peculiarly appertain only to princes which have experience in matters of arms and combats between noblemen and gentlemen.

But now that the office of conſtable and earl marſhall have been neglected and unknown, there will not want intruders in other mens faculties.

To conclude therefore, the laſt example which I find of controverſy in challenge of arms is that between Sir James Parker, knight, and Hugh Vaughan, gentleman, huiſſer to the moſt prudent prince king Henry 7. wherein the advantage that the ſaid Sir James Parker, knight, would have taken againſt the ſaid Hugh Vaughan, by reaſon that he was not a gentleman of name and arms, as he ſuppoſed,

doth

doth ſhew the right, and prove the policy and advantage which the ſaid knight would have had to fight in armour and with ſwords, &c. againſt Hugh Vaughan, who not being a gentleman, muſt have been clad in leather, and fought with his batt without armour or other weapon.

N° XXXVII.

Of the ſame.

By Mr. AGARD.

13 Februarii 1600.

BEING reſtrained in the propoſition by this word *lawful*, yet it ſhall not be amiſs that I enlarge my diſcourſe in beginning with unlawful challenges and quarrels, which by our laws, cuſtoms, and pleaſures of princes have been juſtly reſtrained.

Firſt, it is apparent by the ſame, that not every one that will ſtand upon his reputation of valour is to be preſently admitted to proſecute his revenge by main force and dint of ſword. Wherefore, for the avoiding thereof in king Edward the Firſt's time, proclamation was made in the county of Eſſex in the 29th year of his reign in theſe words: *Quia dominus rex intellexit quod quidam apud Branketre, &c. et contra inhibitionem regis nuper inde factam juſtas fecerunt, &c. fac et etiam idem vic. per totam ballivam ſuam ex parte regis publice proclamari, et firmiter inhiberi ne quis ſub foriſfactura terrarum et tenementorum et omnium que regi foriſfacere poterint, torneare, bordeare, juſtas facere, adventuras querere, ſeu alias ad arma ire preſumant, ſine licentia regis ſpeciali.* The like writs were directed to the ſheriffs of Eſſex, Kent, and Suſſex anno 31 of the ſame king, whereby it appeareth that the king ſeeing theſe aſſemblies of his ſubjects to make triall of armes, brought this inconvenience, that there growed thereby particular quarrels and chalenges to the damage and danger of his ſubjects, did by

by public proclamation, as well in ſhires where the ſame were practiſed, as alſo in his court of king's bench, plainly inhibit ſuch dangerous and mutinous aſſemblies.

Again, the ſame king, as it appeareth in the pleadings of the king's bench, *term Paſch. anno* xxxiij° of his reign, not favouring furious challenges, being in Scotland againſt the Scotts attended by two barons, the one called Nicholas de Segrave, and the other John de Crumbwell; the ſaid Nicholas, upon diſcord happening betwixt him and the ſaid John, being in the king's army, *malicioſe & abſque cauſa movebat diſcordiam verſus predictum Johannem:* which John offered to defend himſelf according *ut curia conſideraverit*, &c. And the king's attorney lieth to his charge, that he the ſaid Nicholas departing from the camp, and leaving the king in peril of his enemies, and contrary to the king's prohibition, challenged the ſaid John to come and defend himſelf in France before the French king in his court; and therein as much as in him lay ſubjected the realm of England to the realm of France, and ſo took his journey to Dover, where being ſtopped from paſſage by the king's commandment, he found out another place of paſſage; but at his return being ſtayed at Dover by the conſtable of the caſtle, he broke from out of ward, and ſo retired into Northamptonſhire, where the ſheriff was commanded to take him, and ſo brought him into parliament and the king's bench, to be arraigned before the lords; where the ſaid Nicholas confeſſing his fault, and ſubmitting himſelf to the king's pleaſure: *de alto et baſſo*, judgment is given on him in theſe words: *Et ſuper hoc dominus rex volens habere adviſamentum comitum, baronum, magnatum et aliorum de conſilio ſuo injunxit eiſdem in homagio fidelitate et ligeancia quibus ei tenetur, quod ipſi fideliter conſulerunt qualis pena pro tali facto ſic cognito fuerit infligenda. Qui omnes habito ſuper hoc conſilio, &c. dicunt quod hujuſmodi factum meretur penam amiſſionis vite.* Whereupon he is committed to the Tower, and after delivered upon ſureties. And laſtly the king pardoneth him. Whereby it appeareth that his manner of challenge was altogether unlawful, in that he would make his own

own revenge. The like happened *anno* xx°. *dicti regis Ter. Hillar.* and was treated on in parliament. That controverſy happening in South Wales and Herefordſhire betwixt the earl of Hereford and Eſſex, and the earl of Glouceſter and Hertford, the ſaid earls fell to it with downright blows, and met *cum vexillis diſplicatis*, killing and burning houſes and churches. But the king called them to accompt for the ſame; committed them both to the cuſtody of the marſhall, fined them both at $\overset{M}{X}$ marks a piece, and deprived them both, of the liberties of their lands, and committed the ſame to the regard and cuſtody of Roger Burghill; and laſtly commanded that this judgment ſhould be inrolled in the King's Bench, Common Pleas, and Exchequer; in all which places I myſelf have ſeen the ſame.

Hence it appeareth that the deciding of all quarrels betwixt party and party tending to the preſerving of peace, remaineth wholly in the prince. And therefore the kings in former ages in all their grants made to abbeys and borough towns made this exception, *Salvo nobis judicio de vita et membris.* For if every man ſhould be his own revenger it were not poſſible that ſociety ſhould hold among men; but all would be full of murders, maims, and confuſion: and therefore our laws imitate that which is ſaid in the firſt book of the Kings, of Joab who murdered two noblemen, Abner and Amaſa; that he took his dagger in his hand and ſtabbed them. So in all our indictments of manſlaughter and murder, I ſpeak of old time, were uſed theſe words: *Et cum una Hachia vel uno gladio, vel uno cultello vocat.* a dagger, *quem in manibus ſuis tenuit, percuſſit J. H. unde ſtatim obiit.* Whereby it is concluded that the murderer or man-killer took into his own hand the ſword of juſtice out of the magiſtrates hand, and wrought his own revenge. A thing moſt odious in the ſight of God, who ſaith, *mihi vindictam & ego retribuam.*

Truely our laws do utterly forbid ſuch challenges and trials by ſword to be had upon every light occaſion or complaint, indictment for treſpaſſes, or otherwiſe. And therein I find a notable precedent in the eighth year of king

Richard the Second, where one called Edward Dalingruge, a knight in Suſſex, being about to be indicted for ſundry miſdemeanours by him committed, and having the matters given in evidence againſt him before the juſtices by one John Sencler, knight, anſwered, *Quod materiæ illæ non continebant veritatem. Et protinus projecit Chirothecam ſuam coram juſticiariis et petiit admitti ad dirationandum materias predictas verſus predictum Johannem per duellum. Et ſic contra legem terre coram prefatis juſticiariis vadiant inde duellum.* But what became of this his unlawful fact? forſooth he is committed to ward to the ſherriff, there to remain *quuoſque ſatisfecerit domino regi pro contemptibus predictis.*

But leaving theſe unlawful challenges and combats to them which deſire to have the bleſſing of their gaffather Cain, *fugitive and vagabond ſhalt thou be*, I will come to lawful combats which by the laws of all nations, and here with us in England, are and have been always reputed lawful, and allowable, and which I will divide in two ſorts, martial and politick.

For martial, I obſerve one law ſpecially ſet down: *Si quis propter formidinem fugiens, dominum vel ſocium ſuum deſtituerit, ſive navali bello ſive terreſtri, quicquid poſſidet cum propria vita amittat*; that law continued, and yet doth abide in force in martial affairs, as was to be ſeen by the combat in king Henry the Third's time that paſſed betwixt Henry of Eſſex and Robert Montford, who charged Henry of Eſſex, that in a battle fought by the king againſt the Welch men, the ſaid Henry carrying the king's ſtandard, caſt the ſame from him and fled, and left the king in peril of his enemies, and after came back again, ſeeing the enemies repulſed, and took up the ſtandard again. Which the ſaid Eſſex denying, the ſaid Montfourd ſaid he would prove the ſame by combat; which the king granted, and ſo came to Reading where the ſaid combat was tried betwixt them, and Mountford overcoming Eſſex, he was thruſt into the abbey there, as ſome ſay, and made a monk. So as that was a martial combat proceeding upon terms and acts of martial honour. A like combat happened at Haddington in king Edward the Fourth's time

betwixt

betwixt an Engliſhman and a Scottiſhman. The Scot ſpeaking diſloyal words againſt king Edward charged the Engliſhman therewith, ſaying that he heard him ſpeak thoſe words. The Engliſhman ſtood upon his defence, and challenged the Scot. And becauſe no proof could be made of either ſide, Sir James Wilford, then general, admitted the combat, which was done in this manner: In the midſt of the market place were made the liſts with rails, ſome 40 feet long and 30 feet broad; and both of them were brought in by gentlemen. Their weapons being tried and found equal, they both kneeled down upon their knees and took an oath of their rightful cauſe. Proclamation was then made that no man ſhould enter the liſts upon pain of death to aid either of them; and declaration made to the combatants, that if either of them recoiled ſo far forth as to touch the liſts, the ſame ſhould die the death. Then they joined the battle, where the Engliſhman conquered, and made the Scot confeſs his treaſon; whereupon he was preſently hanged in the place. The place where the ſame was done was ſhewed me with other circcumſtances by a gentleman who then ſerved there under Sir James, when I was in Scotland about 34 years paſt. There are admitted in martial affairs mutual challenges of ſoldiers, enemies one to another. As to break a lance, to toſs or puſh a pike, to change a bullet, to try a ſword, and ſuch like, as happened betwixt Joab and Abner, where Abner ſaid to Joab, let the young men riſe and play before us, where 12 againſt 12 meeting together, every one killed his enemy, and ſo they fell to the ground all on both ſides. But leaving the combat of Cornwall whereby the ſhire took the name; and that of Edmund Ironſide with Canute the Dane; and that of Henry Bullinbroke with Mowbray; all which being martial are mentioned in our printed hiſtories, I will make mention of one only treated on in the King's Bench, and in parliament in king Edward the Firſt's time, anno 22^do^, which began thus. A nobleman of England, named William de Veſcy, ſerving in Ireland, did charge John Fitz Thomas, a nobleman of that kingdom, that he ſhould report

to the king and council, that the ſaid William ſhould ſpeak to him defamatory words againſt the king's perſon; and practiſed with him to combine to have taken his part againſt the king. Whereupon the ſaid John was produced before Gilbert of Clare Duke of Glouceſter, then deputy there, and others of the council, to know what he could alledge againſt the ſaid William, which John exhibited his words of accuſation in a ſchedule in French: *Et predictus Wilhelmus audito tenore ſcedulæ predictæ dementitus eſt predictum Johannem dicendo, mentitus es tanquam falſus & proditor; et denegavit omnia ſibi impartita.* And then offered to prove and defend himſelf by his body againſt the ſaid John, *et tradidit vadium in manum juſticiarii qui illud admiſſit. Et predictus Johannes advocavit omnia, &c. et tradidit vadium et dementitus eſt ſimiliter dictum Willelmum.* And ſo a day was given for the combat, which was adjourned from out of Ireland to the King's Bench, *coram ipſo domino rege apud Weſtm. ubi predictus Willelmus venit die conſtituto. Eques armatus armis militaribus videlicet cum dextrario cooperto, lancea, ſcuto, cultello lorica, et cum aliis armis militaribus, & oppoſuit ſe verſus predictum Johannem paratum ſe defendere ſicut curia conſideraverit, de omnibus ei per predictum Johannem impoſitis. Et predictus Johannes ſolempniter vocatus non venit. Et predictus Willelmus ſupplicavit quod ſi plura arma haberet quam competeret quod illa poſſet dimittere per licentiam curiæ, et ſi pauciora haberet, quod plura habere poſſet.*

But the king in the parliament anno xxiii°. did give judgment in this matter, declaring the unlawful courſe of proceeding in this combat, and ſhewed the errors in the ſame, and ſaveth the honour of them both. And thus much for martial combats.

Now as to ſuch combats as are mentioned in our lawful courſe, I find there are two eſpecially. The one in a writ of right, where the demander of the land produceth his champion, *et offert dirationare per corpus T. E. liberi hominis ſui, ut ille cui pater ſuus dixit, &c. vel ut ille qui hoc ipſum cognoſcit: vel ille qui audivit H. F. hoc idem dicentem.* So

as the champion muſt be ſuch a one as knoweth the matter. The other is in appeal of murder or felony. The manner of it is ſet down in the laws of Normandy expreſly, from which it ſeemeth that our laws have taken their direction and faſhion, of all compliments to the ſame belonging. And in the 65th chapter treating of murder it is thus ſet down. Richard complaineth againſt Thomas, which feloniouſly murdered his father, and is ready to prove the ſame, and to ſhew it any time of the day, if Thomas deny the ſame, and offer his gage to defend it. Then his gage is firſt to be taken, and after that the gage of the appellor; and either of them muſt put in ſureties to obſerve the law. It is at the choice of the juſtices whether to commit them to priſon, or take bail of them for their appearance at the day, either alive or dead, ready appointed before the juſtices to wage battle in this ſort; immediately after noon the champions muſt offer themſelves apparelled in their doublets and coats, having their targets and their ſtaves tipped with horn, armed as they ought to be, and their clothes of cloth, leather, or linen. Their targets, ſtaves, and armour for their legs muſt be of none other than wood or leather, or the one of them, and they muſt have none other weapons than a target and a ſtaff. Both of them muſt be rounded on their heads above the ears. They may be anointed if they will. When they appear thus appointed, then the words of the record of the battle ought to be read, which not being well recorded according to the challenge and waging of the battle, they are to be amended. And then the champions are to be brought to the field with four knights, which ſhall have charge of the liſts and direction of the place of combat. Then Proclamation ſhall be made, that none upon peril of life be ſo bold as to do any hurt to either of the combatants either in word or deed. Then the champions are brought forth, and on their knees take their oath upon the words of the appeal, holding each other by the hands: the appellor on the right hand, and the defendant on the left. Then is demanded what is their names, and whether they believe in the Father, Son, and Holy Ghoſt? And whether they believe as the holy church

church doth? And when they have anſwered, yea, the the defender ſhall ſwear in this manner, *Hark, thou fellow, which I hold by the left hand, which art called Thomas by name, that I have not murdered nor killed thy father; ſo help me God.* Then the other ſweareth the contrary, and addeth further, that he in ſo ſwearing is perjured. Then they ſwear that they have not uſed any witchcraft or ſorceries. Then they deliver to them their ſtaffs and targets, and the four knights ſhall ſtand betwixt them, until they have heard what they have to do, and until proclamation be made. Then the four knights withdraw themſelves unto the four corners of the field. And it is ſaid, that if the defendant can ſave himſelf until the ſtars appear in the ſky, he ſhall then be adjudged to be vainqueror.

Combat in a writ of right.

I never read the manner of any appeal or combat in any record, but Veſcyes and Fitz Thomas, and this law of Normandy, although I have read of ſundry in writs of right, where it hath been ſhewed that *duellum inter eos armatum fuit et percuſſum et ſerviens predicti abbatis devictus et interfectus.* This is in Mich. anno 15 Edw. I. in banco, in com. Suff. Rot. 8. in a writ of right betwixt the champions of Weſta de Cokeſende, and the abbot of St. Edſmondſbury. And thus much for this queſtion.

DUELLO

Nº XXXVIII.

DUELLO FOILED,

OR

THE WHOLE PROCEEDINGS

IN

The orderly diſpoſing of a Deſign for ſingle Fight between Two Valiant Gentlemen;

BY OCCASION WHEREOF,

The Unlawfulneſs and Wickedneſs of a *Duello* is preparatively diſputed according to the Rules of Honor and right Reaſon;

By Mr. EDWARD COOK.

To . . . . . .

Moſt honourable my very good Lord,

REASONS moving me to write this thing, which handleth not the whole matter of a *duello*, but only the main point concerning the quality thereof, what other, or ſo worthy can there be then the pity that ſo many hopeful and principal gentlemen are caſt away in theſe wicked ſingle fights? To which deſperate evil, as a court of honour (where the earl marſhal is the proper magiſtrate) may give greater redreſs then any penal laws, which are eaſily ſet at nought where fear of death is nothing worth, to withold from actions of blood and fury, ſo conſcience and right reaſon working in minds not already poſſeſſed with falſe opinions, may operate moſt of all. The reaſons why I preſent them (drops of a full ſhower) to your lordſhip are the tender of my duty and devoted affections, and knowledge I have, that for the common good (herein ſought) your lordſhip will give them good and honourable acceptation. Moſt humbly reſting always

At your lordſhips ſervice.

DUELLO FOILED, &c.

THE two parties between whom this ſingle fight was appointed, were a knight and a gentleman of ſpecial worth, both known to myſelf; but the knight very inwardly. From him receiving a few lines, they gave me occaſion to bethink of a ſpeedy courſe. My anſwer was as followeth:

To my honoured good friend Sir PETER O.....

" *YOU muſt fight*, for your honour is engaged, which " you cannot otherwiſe in your caſe uphold but with " your ſword: *you muſt fight*, for you are wronged, and the " world takes knowledge of it, and as a gentleman you " cannot neglect yourſelf in that reſpect: *you muſt fight*, " that is, you muſt kill or be killed, or at leaſtwiſe make " it underſtood, that you dare put it to that point."

Thus you write, and add, that your enemy is a gentleman; therefore the contention cannot be diſhonourable.

Sir, you have me no cold, or ſlow feeler of your wrongs, who am ready to live or die with you in any worthy action: evident it is that you have reſolved againſt death itſelf; but therein I hope not againſt reaſon alſo, for *you muſt fight*. The neceſſity then makes it juſt, and your will doth well to concur with that which you cannot fly from. I am none of them that will perſuade contrary to your honour. This I ſay, that your ſo noble and hot reſolution I ſhould the rather admire, if it did not proceed from neceſſity, which abates of the glory. The neceſſity appears in that you ſay *you muſt fight*; yet do I not ſee that neceſſity, and therefore the glory may ſtand entire. But *you muſt fight*, and therefore words are to little purpoſe; neither can a mind taken up with ſuch a determination have leiſure to think of any thing farther than only thus, how to come home a conqueror. I will not therefore return you words leſt I might advantage your adverſary by retarding your fury, upon whom I would have you pour out your whole diſpleaſure,

which words might weaken in you; for, ſeeing *you muſt fight*, I would not cool, and ſo in part diſarm you, (only that you may fight the more aſſuredly and with leſs diſtraction) ſettle your worldly eſtate and make your will; for that purpoſe I will ſtay within all this day, and your day is not till to-morrow; and as I would not have you a coward, ſo not to do things with ſound advice, is to make it thought that your enemy hath power to fright you from yourſelf by perturbing you.

Fare you well.

This letter thus diſpatched with all ſpeed to draw thereby his repair unto me (both for that the air between, and other familiar occurrents might ſomewhat ſerve to clear his paſſion, and for that I might have him the more fully to deal upon) my next work was to ſend away this other which follows:

To my very loving friend Mr. ——

SIR,

I HEAR that there is a field deſigned between two of our very dear friends, Sir Peter O . . . . and Mr. Anthony D . . . . they are both (we know) of a fierce forwardneſs; deal you with Mr. Anthony D . . . . and let us find out the wrong, take a ſcantling of the quantity, apportion due ſatisfaction that both their honours ſaved, we may preſerve to God, our prince, and country, the ſouls and bodies of two ſuch worthy gentlemen.

Fare you well.

This my letter had a preſent anſwer thus:

To my very loving friend Mr. ——

SIR,

YOUR tidings are too true; for ſince the receipt of your lines I have heard it from two ſeveral perſons, men of quality. The cenſors of ſingle fights have it up in table talk. The remedy muſt be ſpeedy. All buſineſs ſet apart, I will

dedicate this day to ſo good a work, and find out Mr. Anthony D . . . . Theſe wicked *Duellos* are the bane of many a worthy man; handle you the knight, and I will deal with the other gentleman.

Fare you well.

This anſwer of Mr. . . . . came no ſooner to my hands, but I perceived hard at hand Sir Peter coming, therefore reading it haſtily over I ſent the footman away with inſtructions by word of mouth, to wiſh his maſter to do as he had written, and concealing all ſuſpicion of that I went about, I gave myſelf wholly to the entertainment and handling the knight, whoſe words and mine for avoiding of too often putting in (quoth I, and quoth he) I will here ſet down in dialogue.

Knight. By your leave, dear friend, for your letter I thank you; come let us diſpatch the will, for that is my buſineſs.

Gentleman. Worthy Sir Peter, you are moſt heartily welcome, and I am ready. To aſk after the cauſe of your quarrel (which I ſuppoſe to be on your part juſt) were to trifle time. Let us diſpatch what you come for.

Knight. I have here with mine own hand ſet down the brief points of my will, where I will uſe your judgment; and then here is a fellow ſhall engroſs it in form with ſpeed, that I may ſign it.

Gent. Though I doubt not but that you ſhall return out of the field with honour, yet this is providence, and ſeeing you are pleaſed to confer with me about your laſt cares, let me ſee the brief notes . . . . . All is as well as can be. Let the fellow draw and engroſs it in form. But what ſhall we do the while, for you will not away till it be done?

Knight. Let us into the garden, if you will.

Gent. Content; but are you agreed whom to take with you into the field?

Knight. Whom but yourſelf?

Gent. Very willingly! But then firſt it is fit that you ſhould give me leave to confer with you a little, not concerning the quarrel (for that I am ſtill reſolved is on your part juſt) but of this manner of fight which is called *duello*, that ſo I may bear you company with a ſafe conſcience.

Knight. God forbid elſe.

Gent. God forbid, do you ſay? I am glad to hear that, though I do not therein infer you to be negligent of God's diſpleaſure. But (as I wrote) I ſee not that neceſſity by occaſion whereof you ſay *you muſt fight.*

Knight. No! you have heard my reaſons: how can I poſſibly then avoid?

Gent. I do not ſay you can, becauſe you ſay you cannot. Nevertheleſs I ſhould take that to be a right neceſſity, if your adverſary had you before him at the ſword's point; if he aſſailed you in a ſtreight; if he preſſed you with peril of your life. Here is no ſuch thing, but a deſign in cold blood to kill one the other, which though it may happen otherwiſe, yet may it happen ſo: and in contingencies of this kind it is beſt to conclude the worſt. Neither herein is there any thing different from the modern form of *duello*, which I cannot but hold unlawful.

Knight. If any private fight be lawful, certainly in my caſe it is, and *vim vi repellere* is *juris naturæ*, whether that violence be offered to a man's perſon or fame, or otherwiſe howſoever.

Gent. My opinion concerning *duello* is hitherto as I have told you, and it being true (as it is) that *acceſſorium ſequitur naturam ſui principalis*, then if I go with you on this quarrel (which I am moſt ready to do, my conſcience firſt ſatisfied) you muſt clear my juſt doubts, who ſhall be as deep in to all conſtructions as yourſelf,

Knight. If I do not that, I do ill.

Gent. Should I tell you what I have heard, that the learned of all ſorts hold in this point, you were never able to endure againſt ſuch a ſtream of authorities as do wholly condemn it for wicked and contrary to Chriſtianity; but I will

will only go to the reaſon of the thing itſelf, and to common reaſon, ſeeking from thence ſuch a ſatisfaction as is fit for him to receive, who for your love is ſo deeply to engage himſelf.

Knight. Say on.

Gent. Honour is the chief common place from whence you draw your defence of ſingle private battles or fights, and for preſervation of that honour you do it. Let honour now be what divine thing you will (as I cannot think it to be more than a fair renown or name gotten in regard of honourable parts) and let it be never ſo worthy for which a man would ſpend his life, I only deſire to learn how the *duello* can (I will not ſay) be *legitimum* but *idoneum medium* to preſerve it. YOU ARE WRONGED, YOUR ADVERSARY IS A GENTLEMAN, AND YOU MUST FIGHT. The end of your fight then is to right yourſelf and to preſerve your honour. If by fighting you be not righted, then both do you fail of your end and wrong yourſelf. Unleſs the truth appear you cannot be righted. If then this be not a fit mean to make the truth appear, you are not righted: juſtice delights in truth, and juſtice is a blinded goddeſs; but while you put it upon the blind, beware you refer not your cauſe to fortune, not to juſtice. Search this matter to the quick. Mark now; as a means to right my wrong, I propound myſelf to deal with my ſword againſt the ſuppoſed wrong-doer; if this be a means, can I deny it to be very unſure and fallible? I may fall under my enemy's weapon for tempting God, and then inſtead of righting myſelf I give the world cauſe to judge that I was in the wrong; ſo to the loſs of life I add the ſuſpicion of a deſerved death. Say, I kill mine adverſary (wherein I can ſcarce tell whether I am more fortunate than if I myſelf had been killed) have I preſently made it clear thereby that he was in the wrong? all that can be concluded from thence is, that I did put my thruſts home; that it was my fortune, as they call it; that it was manfully done; and ſo forth. How is the *duello* now a fit means to right myſelf? is not every thing in as great uncertainty as ever it was? doth any

man

man think the ſlain more nocent, or myſelf the more innocent? I conclude then that *this kind of trial by the ſword conduceth not to the pretended ends of righting yourſelf or preſerving your honour.*

Knight. But my conſcience knows he did me wrong, and by fight I ſatisfy my conſcience.

Gent. My diſpleaſure, anger, or other corrupt human affection I may perhaps, but not my conſcience; for how is that more ſatisfied by adventuring my life than it was in underſtanding of the thing? If my conſcience be not ſatisfied before I come to draw my ſword, upon deliberation how can I be thought to have a conſcience? Theſe courſes ſeem to burthen, not eaſe the ſoul, as them by which ſhe is made to know the leſs by how much the more it is troubled with paſſion. Never let me ſay then that my conſcience can thus be ſatisfied, but dangerouſly charged rather.

Knight. The world will think I dare not fight; and by much bearing I ſhall but invite abuſes: he that wrongs me in my honour ſhall without peradventure know that I carry not a ſword of lath but of bright metal, and revenge is neceſſary to keep the world in good order; for albeit many pairs of gallant gentlemen miſcarry in this ſharp juſtice, yet the ſtreets are far more quiet, and few are ſo hardy (as heretofore in ſword and buckler times) to offer offences.

Gent. Upon the abuſe firſt offered, while as yet the blood is hot through wrath, always in theſe actions predominant, and which is a capital ſin, to let the ſtuff of the ſword appear is not ſo culpable, for that men at ſuch times are not themſelves through paſſion. But that, and all other reaſons put together (for any thing that ever as yet I could learn) are not a ſufficient ground for a Chriſtian gentleman to ſet his own or another man's life at naught. I will break this ſheaf of arguments by pulling them in pieces one by one. You ſay the world ſhall know that you are no coward: it may know ſo much already, your friends do; but who knows that better than yourſelf? Or who needs to know it more? and what if the world know it not? is the world's

conceit

conceit ſo neceſſary a part of life that you can think it worth your life? You may ſay it makes for your honour that the world ſhould know ſo much: if honour conſiſts in the world's opinion, not in the quality of the merit, what is the world that I ſhould for it deſpiſe ſo many main points, as I will hereafter ſhow are for that reſpect deſpiſed? But what if it make not ſo for your honour? For what, if to fight in this kind be not an act of fortitude, is not the glory you propound to yourſelf not only falſe but pernicious alſo? Let us look upon the thing itſelf. Two gentlemen meet in a deſolate place, with each a witneſs, or perhaps none; there the one kills the other. Now the world knows theſe were no cowards: what then? Marie, the world knows theſe were no cowards. O wretched circle of illuſion! Firſt, if none ſee the battle, who knows but that the other was ſlain (as Coſbye ſlew L. Bourk) by treaſon? in ſtooping to unbuckle a ſpur, or by miſadventure, as in ſtumbling, and that too perhaps while he purſueth his enemy running away, or in time of truce, and breathing and advantage cruelly taken. If two friends ſaw the bloody trial the report will ſeem partial, and if it do not ſeem, yet only a few ſhall know it, and for a very ſhort time. Who are then the world? or to which ſort of men in the world hath this ſacrifice been made? To ſome few young and ill-inſtructed gallants, who neither know others, nor themſelves. The religious, the grave, the wiſe, the truly valiant are no part of the world in this caſe, for of that ſort were all they that made laws againſt theſe homicides and murders; and yet the world ſhall know theſe are no cowards. How light and empty is he whom ſuch a conceit can carry to deſtruction? ſhall the world hereby know that they are no cowards? The evil world is a deceiver and hath been ſo from the beginning; the judgment thereof is worth nothing; but ſay it were: the world knows of a fight, but doth it know of all the reſt? Doth it know but that the parties were in wine at that inſtant? Where is then the glory of manhood? lamentable frauds of the devil. But ſay, the world knows thus much; can they who fought make it at the ſame time underſtood, that they

they regarded not the world more than God? Is it leſs infamous to be ſuppoſed an atheiſt than a coward? Or is it better to be thought daring to fight, than deſirous to die well? But in making the world umpire, who can marvel that God ſhould not be thought upon? To make it your end that men ſhould be deterred from abuſes, knowing your humour not to bear them, is as ſtrange, conſidering you purchaſe this ſuppoſed ſecurity with perhaps the loſs of life, as if I would give away my life to prevent the fear of a cut. So that while I contend to be ſafe, I make my hazard greater than my harm could be when it ſhould happen. Again, can I by one example of revenge in this kind make the world take knowledge to beware how it wrongs me? Or do I not animate the deſperate to ſeek glory upon me? And while I would give experiments that I am not to be wronged or tempted with abuſes, do I not either periſh in exhibiting them, or draw dangers upon myſelf by kindling malice or ambition in others? I provide not then for my quiet or ſecurity; but I do conſpire againſt it. The judgment of the world in the good and honourable parts thereof, is not to be deſpiſed; but how that ſhould be led to believe well in this caſe, I ſee not. For if it be not an act of virtue they cannot approve it. An act of virtue it is not, for if of any, it is of fortitude, and of fortitude it is not: for that it ſeeks not juſtice juſtly, nor *bonum bene*; becauſe no man ought to be a judge and witneſs in his own caſe; and ſingle battle is neither a lawful nor fit mean to try by. I argue from fortitude to juſtice, for that each virtue partakes of other: and if it be an act againſt juſtice, or but a vitiating error about the thing proceeded in, it is againſt fortitude alſo: finally, it cannot be an act of fortitude, for that is an act of wrath, revenge, and fury, which are vices and not virtues; it is an act of vain-glory and ſelf love, and for our own ſakes we do it, not for juſtice, which both publick and private is hereby violated.

Knight. Then belike we ſhould bear abuſes and indignities, which are often more intolerable where the law affords

fords no action than where it doth; or ſhould always be upon arbitrations of differences, or in ſuits of law. But that we cannot be, for the ordinary courts are not capable of quarrels among the noble, whoſe proper court is that of the earl marſhal of England, the want whereof is a cauſe, I doubt not, why many great evils and heart-burnings continue unredreſſed; for gentlemen then might have their wrongs and quarrels rightly righted.

Gent. That may be ſo. But to anſwer you to the purpoſe, I ſay that what you ſpeak of abuſes, of arbitrations, or ſuits, are all of them urged out of a ſuppoſition of inconveniencies likely to follow, if *Duello* were not, and yet the ſame (though *duello* do what it can) do notwithſtanding abound; therefore they are nothing to the ſtate of the preſent queſtion, or to the clearing of *Duello* from the taint of being wicked and unlawful; and if the compariſons be of the harms which riſe from the uſe or diſcontinuance thereof, I can ſcarce think that thoſe which may come by the diſcontinuance are fit to be called inconveniencies, in regard of thoſe other which do certainly ſpring from the uſe.

The common place of bearing or not bearing injuries or diſgraces is very large; the law of fleſh and blood ſaith, we ſhould not bear, but revenge them, and in that law your *Duello* is founded. I will not in preſent be too ſevere, or (ſo to ſay) too much Chriſtian in this point. Admit then that it is of counſel to forgive injuries, as well for the pain as fault, and not of precept; nothing makes for *Duello*. We need not bear abuſes and indignities, neither for all that fight in cold blood, or at all. We all of us are lovers of ourſelves, and may think wrong offered when none is: grant it be, the *Duello* is no fit mean of righting it. That being ſo, to find out the fit mean is of another queſtion, in the mean time the *Duello* is wicked and unlawful. What you infer of keeping the world in good order by revenges (meaning by revenges ſuch as are lawful and orderly) and of the decreaſe of abuſes in converſation by the terror of ſo ſpeeding and ſhort a way as the ſword's point, may be granted without the leaſt advantage or credit to the *Duello*.

Enjoy we the benefit of that common awe, and rather live by ſuch examples than make them; wiſdom draws ſovereign preſervatives out of folly, and it is the ſublimity of reaſon to beware with the leaſt peril or charge to ourſelves.

Knight. By our Lord, I may ſpare the making of a will for any buſineſs of danger now in hand, if I hearken but a while longer to you: but I abhor not from knowledge, forſomuch as God hath give an human ſhape, and reaſon to guide it, precipitation is for beaſts, not for men. Therefore in the moſt ſerious conſultation (and perhaps the laſt which ever I ſhall make) I am not, I thank God ſo ſhut up againſt diſcretion and right duty, as not to examine the grounds of conſcience: for, if *Duello* (contrary to the vulgar opinion of the noble) be not lawful, or at leaſtwiſe not unlawful, I had yet much rather chooſe diſhonor then damnation.

Gent. You ſay well, and I think you were better: yet you ſhall not treſpaſs againſt your honor, for preſervation whereof good ways may be found out, yourſelf preſerve yourſelf, make a friend of an enemy, obtain ſatisfaction competent, and in all points perform the duty of a wiſe and valiant gentleman: for, as for your fear to be ſpotted with the note of fearfulneſs and conſequently of incapability to be honeſt, is moſt vain, ſeeing your abſtinence ſprings from the fear of God, and not of your enemy: and then ſhall you declare your valour, when you dare, for keeping your ſoul in obedience to the will of God, ſet light by that which is called the world. If any one ſhould be fooliſhly thereby encouraged to do wrong, who can forbid a man of arms to keep his way with his ſword; impeach him who ſo liſts.

Knight. Well, but let us hear in a few words more, why *Duello* is ſo unlawful.

Gent. I will come to your deſire by the ſhorteſt way of ſatisfaction, Let the learned tell you; that what the Greeks call *Monomachia*, the Latins *Singulare certamen* and *Duellum*; that is (ſaith one) *Duorum bellum*, whether men or ſides, and the Italians out of the Latin *Duello*, we the

Engliſh

Engliſh call *Single fight*: for, by the French word *Combat*, we commonly underſtand a battle between two, where appointed magiſtrates look on, and is of many ſorts. Firſt, where it is between two publick enemies, as of * David and Goliath, † the Horatii and Curiatii, king Edmund and king Knute here in England. Secondly, where (according to martial law) the proper magiſtrate permits two ſubjects to decide by force of arms, an unteſtifiable controverſy, as in the caſe of the dukes of Hereford and Norfolk, though it came not to trial; or as in writs of right. Thirdly, where for the honor of arms only, and the glory of chivalry, two are publickly ſingled before peculiar judges. Fourthly, (which is too baſe to be thought of among gentlemen) the matches, or pairs of gladiators in Rome; and whatſoever other ſorts elſe they think too good to add to theſe, which you (I ſee) are not patient of in preſent, becauſe they are not that of ours. Meeting then upon private appointment of weapon, time, and place, between private men for private quarrels, by occaſion whereof the life of man may be loſt, is that fight which you call *Duello*, and I *unlawful*. To prove that, I look not upon the maxims which the commonwealth take by theſe ſingle battles, and bloody performances; nor upon the terror of conſcience inſeparable from the killer; nor his fear and worthineſs to die a ſhameful death; nor the infelicity of ſuch blood-ſhedders, both in themſelves and their poſterity; but conſider it in itſelf. To withſtand force by force was ever lawful; be it ſo. I am aſſailed by mine enemy; who forbids me to reſiſt? but to conſent unto a time and place, wherein only more ſafely to kill one the other, is not (according to the law of nature) to withſtand force by force, but to offer force to nature; in the *Duello* it is ſo. Thoſe grudges are deadly, which cannot be determined but with effuſion of blood: in ſuch grudges what wants there to the height of malice? the gloſs and colour of honor ſet thereupon is but adulterine; the *Duello* then being a ſolemn received way whereby to execute that

* Regum. cap. xvii. Livius. Polyd. Virg. lib. 7. † Stowe in R. 2. ſevera. kinds of Duellos

paſſion, or pravity, who can venture himſelf therein without the contempt of God and his own ſalvation? it is not a glory which can be gotten by ſurvivorſhip in theſe trials.

Firſt, For that one Chriſtian privately kills the other, which by the law of arms affords not any note of honor.

Secondly, For that the quarrels in theſe fights determined, do commonly never bear any proportion with the loſs of life, but are moved (by the devil's ſubtilty) oftentimes upon ſuch points as for which a man would be loath to kill a beaſt.

Thirdly, For that there is no caſe, wherein one private man may of his own will kill another, unleſs it be only in natural defence of ourſelves; and the foundations of glory are juſtice and prudence, as iniquity and folly are of diſhonor. So, let it be never ſo juſt that another ſhould do me right, yet is there no juſtice for me to be mine own taker: for it can hold no proportion; there will be too much or too little: * and that of the Hebrews to Moſes may ever be juſtly aſked, *Quis te conſtituit principem ac judicem?* Nor is it prudence for the ſatisfaction of an humor, to put myſelf in danger to leeſe myſelf; for if the venture (that is mine own life) be far more in value than the hoped return (that is the revenge of a wrong done) how can I be ſaid to have caſt up according to the rules of prudence, one thing with another, before I enter into action? for even then I am a loſer, if but in my quiet, and having what I ought to get, I loſe the more. I ſay not this, for that I would have any honourable man weigh this temporal life above his good name (that is his honor) which no man (as I have proved) can (in this caſe) preſerve by killing another; but when it come to ſuch a point as in which he muſt either chooſe to be diſhoneſt, as to betray his country or die, then to love life above honor is an act of extreme timidity and baſeneſs. You will urge that though thus the *Duello* ſeem to be inglorious, yet it is but inglorious, not unlawful. It is not unlawful becauſe it is inglorious, but in ſeeking glory where none is to be found: as folly is committed, ſo

* Exod. cap. ii. 11. 14.

the

the ſubject of *Duello* being only the unwarrantable killing of another (an act full of brute fury and impiety) it altogether becomes unlawful, and in ſaying that, there is no glory in this kind to be gotten; I do not ſay but that diſhonor follows. That therefore which is againſt law is unlawful, and then not only law, but all laws are againſt *Duello*; yourſelf a man of diſcourſe, had rather hear the reaſon of laws than know the letter of the law, becauſe the reaſon ſatisfies the underſtanding, but the law exacteth obedience without giving the reaſon. Yet it is firſt fit for you to know that all weighty authorities are againſt it. In God's law it is written, *Non occides*; but notwithſtanding this commandment, even Moſes made it in many caſes lawful to kill, moſt true and moſt juſt; for that ever was, and now is an immutable decree in the law of nature, to preſerve the good by rooting out the evil. So malefactors worthily ſuffer death, but killing in the *Duello* is not ſuch; and in private homicides no caſe is excepted in the Moſaical law, as unworthy of death, where there was either *a will to kill, † or hatred corrupting the fact. The ſurvivor therefore in *Duello* ſhould have had no ſanctuary, nor privilege thereof in any of the cities of refuge, but have been drawn ‡ even from the altar itſelf to execution. In the evangelical law, you know that the ſin of murder, being breach of charity in the higheſt degree, is not leſſened but aggravated; and this for the general ſtate of the ſin in the law of God. The laws of men, all of them are againſt *Duello* and private killings, which they diverſely cenſure and puniſh; aſk canoniſts, caſuiſts, civilians, common lawyers if they do not. Chriſtian burial by the canons of the church is denied to both parties, nor but with ſpecial reaſon; for (they dying in an act of malice, and oftentime in an inſtant, without any the leaſt time to repent) it is to be preſumed that they died as well impenitent as excommunicated. Caſuiſts range it with one conſent among the moſt capital ſins under the title of homicide: Civilians (interpreters of the law of honor and arms) are not friends unto it, with whom if it

* Exod. cap. xxi. 13. † Deut. cap. xix. 6. ‡ Exod. cap. xxi. 13.

be

be not lawful to kill an highway thief, * *niſi ſi aliter periculum effugere non poteſt*, what may be their judgment of killers in *Duello*, wherein they do of purpoſe meet? Common law (the antient and deep law of England) makes it impardonable felony, as wilful murder, and pains the ſurvivor with loſs of goods, lands, and life. And wherefore all this, if private ſingle fight be not to the ſoul of man pernicious in the violent breach of charity, and to common ſociety pernicious by taking the office of publick juſtice out of the hands of the magiſtrate, in conſtituting ourſelves our own judges and revengers, filling the land thereby with ſudden miſeries and miſchiefs, widows, orphans, feuds, partialities, ſutes, pourſutes, and the like? But I will fetch the reaſon of law a little higher than from conſideration of evils which follow the fact.

Knight. Let me hear the reaſon, for that is the ſoul of the law.

Gent. The church and commonweal have their ſeveral intereſts in every ſubject, who therefore cannot diſpoſe of himſelf to his final hurt but with wrong to them.

The church claims, and hath a care of the ſoul, the commonweal of the body; and ſoul and body are the whole man; he is a member of Chriſt's militant body, and of the body politick; both parents, the church and country are ſharers, and with them natural fathers, mothers, wives, children, kinsfolk, friends, followers. Theſe and more have right in every ſubject, and are as it were ſo many chains, and bonds reaching unto ſingle fighters, which nothing ought to diſſolve but a lawful or natural death. God the creator having given to man a ſoul immortal, and a nature ſociable, to the intent that himſelf might have the whole glory of their joint and ſeveral duties, as the end to which all other reſpects are but ſubſervient, hath withall infuſed reaſon, that every one in particular, and all in general, might in peace aſpire to that ſupereminent end of our creation: ſo the relation and reaſon of commanding and obeying is *juris naturæ*, and that (for preſervation of the

* Inſtit. lib. 4. cap. 3. de lege Aquilia, ſect. 2.

whole)

whole) is it, which, ſenſible of the leaſt part of herſelf, doth will that for the good of all, every one ſhould be ſecure; for if every one may not be, all are in danger. Becauſe as magnitude conſiſts of parts, ſo multitude conſiſts of unities. From ſuch neceſſary conſiderations as theſe have all laws againſt private hoſtilities and homicides proceeded, leſt ſo many ſacred, natural, and civil obligations, tending to preſerve the ſociety of man in peace, might be in vain; and if that which is called honor may conſiſt, and be with the contempt and wilful breach of all theſe bonds, or if any thing be higher than God and nature, to which that falſe honor can relate, then may I yield your *Duello* to be lawful, the object whereof being revenge, and the ſubject blood and murder, doth at one cut (like Alexander's ſword) diſſolve theſe more than Gordian knots of awe and duty. The laws therefore are grounded upon honor and right reaſon, and for that cauſe *Duello* is not; in which the ſoul is caſt away by wilfully dying in heineous ſin, and the body is loſt to all ſervices by a diſhonorable end, all parts being defrauded of thoſe offices, which in time they were to have yeilded, whereof the account cannot be eaſy. For if in the * Cæſarean law there ſhall be an eſtimation made in caſe where a ſervant is ſlain, what loſs his lord is at, not only in the body of that ſervant ſo ſlain, or his work within the year, but of that alſo which his lord might caſually have gained; who can ſet a value upon the loſs of a young and hopeful gentleman, in whom ſo many had right? or at what ſum might the good which he might have done be priſed?

Knight. Theſe things are many and weighty I confeſs: but who is ſo heatheniſh as not to pray to God before he fights, ſo to provide for his immortal part? the reſt, as being all without us, are not to be ſtood upon by him that reſolutely leaves the world, which muſt however be one day left behind, with what elſe is deareſt therein. Prayer before fight

Gent. I hear you: but of what force is that prayer which is not made in charity? Cain's ſacrifice was as acceptable

* Inſtit. 1. de lege Aquilia, ſect. illud non, ſect. 10.

as

as ſuch a prayer; what is prayer, if God can be thought to hearken then? Or what can we think of God? Or how ſhould God be willing to pardon me who have no pity on another? Myſelf make an example againſt myſelf, and mine own fact pleads againſt mine own ſuit. It is not prayer then, but an acknowledgment that I do amiſs and yet perſiſt therein, which makes me inexcuſable; it is not prayer, it is only an habit of ſaying, Lord, Lord, with the lips, which the heart poſſeſt with outrage, and cruelty never doth think upon. I come to prey upon my chriſtian brother, not to pray like a chriſtian. In an heatheniſh act what can prayer work good, but only by the operation of grace, the leaving of that act? Then it is plain we believe as we ſpeak, when we ceaſe to do that which none can do, and pray as they ought; that prayer is well made which works that effect: If I leave the thing I am ſure I believe aright. O it is a moſt fearful thing to periſh in the truſt of ſuch a prayer, ſo reeds may ſupport a falling man, and quickſands give ſure footing to ſuch as ſtand; that is not to pray, but to mock God, and to deceive our ſouls; for being out of the ſtate of grace, and in ſuch a ſtate, as in which the laſt comfort of dying men (the bleſſed ſacrament) cannot be received but moſt unworthily (that is but to the more damnation of the receiver) it muſt follow that as it is deſperately doubtful, ſuch a prayer cannot aſcend, ſo it is definitely certain, that the work we go about in *Duello* is damnable: and upon preſumption of being heard if we die in the fight, to hope by a tentation of God to eſcape in the fight, who can ſay whether it hath more of temerity or of impiety?

Knight. What ſhall become of all the books, and laws of *Duello*, or why were they written; that being manifeſtly ſo?

Gent. Let them ſtand for laws when the caſe falls in which it is lawful to fight, and for that purpoſe they may ſeem to be written.

Knight. O reaſon, how potent thou art! my underſtanding and will thou haſt ſubdued, and yet how can I avoid

the fight? This is my caſe; the adverſary (who hath done me wrong) hath accepted the challenge, here is the length of his ſword, the time and place are agreed unto; if I maintain not my challenge, let me withal renounce knighthood, cut off my ſpurs, break my ſword, ſee mine arms and honor reverſt before my face, and ſeek out ſome cloyſter, or hermite's cell in the wilderneſs, and never behold the world more. It cannot be but I muſt fight or ſhame myſelf.

Gent. Neither, and yet your engagement is great.

Knight. I ſee the grounds of fight, whereupon I ſtand, very deceitful I confeſs, and the doctrine which led me to it to be *falſi nominis*. This way my underſtanding now doth carry me, but like ſome artificial thing which moves not of itſelf, but *impulſu alterius*, ſo the tyranny of an opinion of ſhame habituated in me by converſation, puts me on againſt it: but a ſhame upon that ſhame. After ſo many ſound reaſons do I now conſult with myſelf, whether I ſhall pleaſe God or the world? Chooſe damnation or diſhonour? There muſt be a care had of all. I will into the field at the time, and there ſhow the reaſon of my unwillingneſs plainly and fully; if that may beget in mine adverſary a conformity to reaſon, I have made a ſaving voyage, if not, I muſt do as I may; life is not worth a word ſpeaking, if the goodneſs of a quarrel bear out the loſs, ſomething muſt be done for ſatisfaction of publick fame; for I may not abruptly give over, neither will I.

Gent. Perplex not yourſelf, good knight, but lay hold upon God and reaſon, and ſubmit your will to them. All degrees and puntos may be holden, and your honor be as ſafe as your conſcience. God himſelf will miniſter an outlet by which to eſcape ſo manifeſt peril of leeſing him; yourſelf have already thought upon an ingenuous, plain, and honorable courſe, but too full of temptation: for the ſight of an obſtinate enemy, with the opportunity (at the ſame time) of inſtruments to execute fury, and circumſtances to do it at full, may thruſt any man too ſuddenly into action, as in likelihood they will thruſt you. God will provide a mean; and inſtead of going with you upon

ſo unlawful a match; I ſhall reſtore you by his favour and aſſiſtance to your firſt peace of mind (worth all the world) to your parents, wife, children, and friends, (that dream not of your winding ſheet as yet) and to your patrimony; to the anchor-hold of honeſt life, and to all things elſe fit for a gentleman to enjoy, your conſcience ſafe, your honor ſafe, and yourſelf ſafe.

And even as this was ſaid, and as God would have it, there came in a meſſenger from Mr ..... who had undertook the other gentleman, bringing with him theſe few lines which follow.

To my loving Friend Mr.....

SIR,

I HAD before long found out Mr. Anthoni D....., wholly taken up with preparing for his morrow buſineſs. I have aſſailed his reaſonable parts, and ſubdued them to an acknowledgment of ſo much injury as he is truly culpable of, and if that may purchaſe his peace (as it ought) we have whom to ſave upon both ſides from ſo certain a mutual danger. Speed back your anſwer.

Fare you well.

Glad of theſe news, but concealing them, I only returned thus much; that I would have him come to me himſelf alone; he did ſo, and after full and ſevere debatement of the whole proceedings, as if there were no remedy but to draw blood; we jointly dealt with the knight, altogether ignorant of my negotiation, for that (I knew) ſtood moſt with his honor the ſtrife was appeaſed, the parties happily brought together, and all things reſtored to better eſtate then before, with life not only not endangered, but with friendſhip alſo renewed, and made inviolable.

DEO GLORIA.

N° XXXIX.

The Manner of judicial Proceedings in the Court of Conſtable and Marſhal (or Court Military) touching the Uſe and Bearing of Coats of Arms; obſerved and collected out of the Records of the Tower of LONDON.

THE plaintiff muſt firſt by himſelf, or his procurator, bring his libel or petition unto the regiſter to have it allowed by the ſubſcription of the earl marſhal, or his lieutenant in his abſence, and entered accordingly by the regiſter, who thereupon ſhall make a ſummons to the party defendant to appear at a certain time and place; and the ſeal of the court being ſet thereunto, he ſhall deliver the ſame to the plaintiff to be ſerved upon the perſon of the defendant, or to be left at his uſual place of abode, as in caſe of a ſubpœna out of chancery: the form of which ſummons is to be ſeen in the caſe of Clopton and Elaud, 7 Henry 6.

* The marſhal, or his lieutenant or lieutenants deputed by him, by his deed in writing and under his ſeal being ſet in court, and the officers in their due places, proclamation ſhall be made according to the original in Scroop and Groſvenor's caſe, which the regiſter muſt enter in his book.

† If the marſhal be abſent, and his lieutenant ſit in his room, he muſt cauſe his commiſſion made unto him by the earl marſhal to be read in court, and an act is to be made thereof by the regiſter.

‡ If the defendant appear not either in perſon or by procurator, being thrice called by the crier, upon affidavit

* At the day in the writ ſpecified, he may alſo depute a lieutenant by word of mouth, as in Lovel and Morley's caſe. Circa medium. † Inter Grey et Haſtings. ‡ In breve verſus William Clopton ad ſectam Robert Elaud.

taken, by the regiſter, and produced in court, teſtifying that he was ſerved with the ſummons in manner aforeſaid, the court ſhall award an attachment to one of the marſhals to attach him, and have his body before the earl marſhal or his lieutenant at a certain day or place. The form whereof is to be ſeen among the precedents of writs.

And being attached, he ſhall pay the uſual fees to the marſhal, and put in ſureties, ſuch as the marſhal will anſwer for at his peril, to appear at the day, or otherwiſe continue under arreſt, until he have appeared and ſatisfied the court for his contempt, and paid coſts and damages to the parties, ſuch as the court ſhall tax.

If the defendant appears either in perſon, or by his attorney, the libel ſhall be read in court by the regiſter, and an act thereof entered.

After the reading of the libel, the defendant ſhall deſire a copy, and a day ſhall be appointed for him to make anſwer.

At which time alſo the parties interchangeably ſhall propoſe unto the court, by a ſchedule in writing, the names of thoſe whom they have conſtituted to be their procurators and advocates (being antiently by a public inſtrument of of procuration) * ſigned by a public notary; for and in their names to proſecution of the ſuit, and to be allowed by the court, † whoſe act ſhall be taken as the act of the parties themſelves: and ſhall put in pledges to perform the orders of the court. ‡ And where need requires, ſhall be bound with ſureties to keep the peace during the ſuit.

§ At the day preſcribed unto the defendant to make anſwer, he may, if he ſee cauſe, exhibit a ſchedule of exceptions to the libel of the plaintiff, to be read by his procurator in court, and to be entered by the regiſter for annulling the ſame, demanding withal coſts and damages for his unjuſt vexation, alledging the libel is too general, defective, and of no validity to ground any proceſs upon.

* Inter Grey & Haſtings. Et inter Lovel & Morley. † Pat. 14. R. 2. m. 47. inter Gilbert & Ducket. ‡ Pat. 2. H. 4. ps. 1. m. 7. § Inter Lovel & Morley.

Whereupon

* Whereupon the plaintiff ſhall demand a copy of the ſaid ſchedule of exceptions, and a certain time to reply to the ſame, which the judge ſhall accordingly grant.

At which day, the plaintiff ſhall exhibit a ſchedule by way of reply unto the exceptions of the defendant, and in maintenance of the original libel, which ſhall be read in court by the procurator of the plaintiff, and entered by the regiſter.

† The plaintiff may further exhibit a ſecond libel in declaration of the former, ſo that it be only by way of declaration, and all the ſubſtance of the ſecond, be contained in the original libel. And the court ſhall adjudge whether the exceptions be to be allowed or not; and whether the defendant ſhall anſwer; and if he be awarded to anſwer, he ſhall reqnire a copy of the declaration, and time to bring in his anſwer, which the court ſhall aſſign; otherwiſe, he is to be diſmiſſed with his coſts and damages; and the plaintiff ſhall not be admitted to put in a new bill until he have ſatisfied the ſaid coſts and damages.

At the day appointed for anſwer, the defendant may exhibit one or more ſchedules by way of exception to the declaration of the original libel, and the plaintiff ſhall demand copies, and time to reply, which the court ſhall aſſign, and ſo forth, proceed to duplication and triplication, if the court ſee cauſe upon the ſchedule of exceptions, for diſmiſſing the original libel.

And note, that the confeſſion of the advocate of either ſide ſhall be taken and proceeded upon, as the confeſſion of the party himſelf.

If after the proceedings upon the exceptions againſt the ſecond libel declaratory, the defendant be ordered by the court to make anſwer to the original bill, he may demand time, and the court ſhall aſſign him a day certain. At which day he ſhall make anſwer, and the plaintiff ſhall deſire copies and time to reply.

* Lovel and Morley's caſe. † Lovel and Morley's caſe.

And

* And at that day the plaintiff ſhall bring in replication in writing, of which the defendant ſhall deſire copies and a day to duplicate.

† At which day the defendant ſhall bring into court in writing his duplication.

And then the court may, if they ſee cauſe, grant time to the plaintiff to triplicate; and after that the defendant to quadruplicate.

‡ After duplication (or after quadruplication) if the court have ſuffered them to proceed ſo far, the parties ſhall demand a day to examine witneſſes, and to produce in court ſuch teſtimonies, evidences, § and minuments as ſhall produce to the proof of their cauſe. After that, commiſſions may go down into the country to examine witneſſes there, which muſt be done upon oath, ‖ and articles, which in a caſe of bearing arms, the court ſhall grant to be done at a certain day, in manner following, viz.

** By ſepulture certificates of abbots, and other eccleſiaſtical perſons, teſtimonies of honourable witneſſes who have had notice of their anceſtors and antiquity, painted tombes, veſtments, and other evidences. And beſides, by the teſtimonies of lords, knights, and eſquires of honour, and gentlemen having knowledge of arms; and by no other men of common or lower eſtate. All witneſſes are to be ſworn, except peers of the realm.

At the day appointed, the parties are to exhibit into court, ſuch evidences, minuments, targets, ſeals, &c. and alſo atteſtations of witneſſes certified by the commiſſioners under their ſeals, as make for their cauſe: and make proteſtation to uſe the exhibits, each of other, ſo far as they ſhall have occaſion.

And theſe are to be kept in court under the ſeal of the conſtable or marſhal, and a regiſter or record is to be made of every particular.

* Obſerve that the lieutenants may ſit in court together with the conſtable and marſhal. † Grey and Haſting's caſe. ‡ Grey and Haſting's caſe. § Lovell and Morley's caſe; they require commiſſioners throughout all England. ‖ Grey and Haſting's caſe. ** Lovell and Morley's caſe.

Then the court is to aſſign day for publication of all exhibits and examinations remaining and regiſtered in the court, and copies are to be given to the parties.

* At the day of publication, the court ſhall aſſign a day for the parties interchangeably to ſpeak againſt the teſtimonies and exhibits remaining in court, if they will.

At the day appointed, the parties interchangeably ſhall, if they ſee cauſe, exhibit a roll containing their exceptions to the teſtimonies and products before taken and exhibited, with proteſtation to amend any thing that is negligently or falſly written; and copies are to be delivered interchangeably to either party: and a day ſhall be aſſigned for either party to make replications againſt the exceptions.

At that day the parties ſhall interchangeably, if they will, exhibit their replications againſt the exceptions; and copies thereof being given to either of them, a day ſhall be aſſigned to conſider whether the ſaid exceptions and replications require proof, and whether the parties ſhall propone any further matter; and why the court ſhould not after the ſaid replications, proceed to judgment.

At which day ſo appointed, either party may propone new matter ariſing and ſpringing out of the exceptions and replications; and witneſſes ſhall be received and ſworn in court, and examined by the regiſter and ſome other commiſſioner joined unto him, to prove the ſaid new matter; or to any commiſſioner as the court ſhall think fit.

The regiſter at a day appointed by the court ſhall exhibit in court the examinations upon the new matter, and at the requeſt of both parties, publication and copies ſhall be granted, and a day given to except againſt the ſaid witneſſes who depoſed to the new matter; and both parties may make proteſtation to uſe the atteſtations of all witneſſes examined, ſo far forth as they ſhould have occaſion, and may demand a day to hear ſentence and judgment; and

* Obſerve, if any order be made in court, it is ever to be read at the next meeting before they begin any further proceeding.

before

before that day, another day for each of them to diſpute, declare, and alledge that judgment may be given on their ſide.

The court may give them a day for each of them to make their allegations for judgment to be given on his ſide, but may (if they ſee cauſe) defer to aſſign any day for ſentence and judgment until they be fully adviſed.

At the day ſo aſſigned, the plaintiff firſt, and then the defendant after him, repeat the whole cauſe, and make their allegations for judgment to be given on their ſides, which allegations the court ſhall aſſign them to put into writing, and appoint them a day to bring them into court.

At which day the parties ſhall bring in their allegations in writing, and demand day to hear judgment, which the court may grant, or take time to adviſe upon.

When the court ſhall appoint a certain day to give ſentence, both parties ſhall be charged to bring into the court all their evidences before exhibited.

At the day appointed for ſentence definitive and judgment, the judge, accompanied with certain aſſiſtance, ſuch as he ſhall pleaſe to call unto him, whereof antiently part were noblemen and part doctors of the civil law, after he ſhall have aſked the parties whether they have any more to ſay in their cauſe, ſhall proceed to ſentence definitive, and read the ſame, being firſt conceived in writing; * and then ſhall aſſign a certain day to ſet down his damages and expences of ſuit.

On that day he ſhall appoint a certain time for both parties to hear taxation of damages and coſts.

At that time he ſhall tax the coſts and damages as ſeemeth to him moſt reaſonable; and ſhall award execution againſt the party condemned in coſts, for levying of the ſame according to the uſe of the court; † and ſhall charge his marſhal with the body of the party ſo condemned.

* Grey and Haſting's caſe. † Grey and Haſting's caſe. Pat. 14. R. II. ps. 2. m. 47.

Though

Though any of the parties bring an appeal, and read it in court at the day of the ſentence, and before the pronouncing of the ſentence; yet the judge ſhall proceed to judgment notwithſtanding, and grant execution againſt the party for the coſts taxed.

Every appeal muſt be brought within ten days after the ſentence given, and there muſt be a public inſtrument thereof made by a public notary, which muſt be exhibited in chancery.

* If any witneſs ſhall refuſe to give teſtimony, being ſerved with a writ *ad ſatisfaciendum*, he may be compelled by mulct or pain, or any other temporal coertion.

† The parties that refuſe to perform the orders of the court ſhall be put in execution, and under arreſt until they conform.

‡ The goods, chattels, lands, tenements, and perſons of the parties, and their ſureties, ſhall be liable to the ſentence of the court.

Orders to be obſerved in the Court of the Conſtable and Marſhal.

I. No bill to be allowed until pledges given to proſecute.

II. No writ of ſummons to iſſue forth before the bill be filed.

III. The defendant may appear by attorney, unleſs upon contempt for not appearing upon the firſt ſummons.

IV. No attachment to be awarded, until affidavit made that the ſummons were ſerved.

V. Both parties to give ſureties of the peace by recognizance.

VI. All bills, pleas, allegations, &c. to be in parchment.

* Pat. 14 R. II. ps. 1. m. 10. † Pat. 14 R. II. ps. 2. m. 47. ‡ Pat. 7 H. IV. ps. 2. m. 19. Pat. 1 H. IV. ps. 6. m. 31. Pat. 2 H. IV. ps. 4. m. 8.

N° XL.

A Defence of the Juriſdiction of the Earl Marſhal's Court in the Vacancy of a Conſtable, and of his diſowning Prohibitions ſent thither from other Courts. By way of Letter to the Honourable Sir JOHN SOMER, Knight, Attorney General to his Majeſty, from ROBERT PLOTT, L.L.D.

Honourable Sir,

UPON preſumption that it will not be denied by any, that this was a legal court, whilſt there was a conſtable in being, I ſhall trouble you with nothing relating to it during that time; but give you firſt an hiſtorical account how matters were carried in reference to it, at and about the time of the extinction of that great office of lord high conſtable of England, and in what manner the office of earl marſhal hath been exerciſed, and this court held ever ſince till within memory, which I ſhall perform with as much brevity, as perſpicuity will admit of.

To come then immediately cloſe to the buſineſs, pray take notice that the laſt perſon who bore that high office of lord high conſtable of England, was Edward Stafford duke of Bucks, who falling into diſgrace with king Henry VIII, in the ſixth year of his reign, and yet exerciſing the office of conſtable to the diſlike of the king, he, in Michaelmas term of the ſame year, aſked all the judges whether he might not diſclaim the ſervices of the conſtable, who unanimouſly agreed, and made their report to the king at Greenwich, as Dyer teſtifies (Reports, fol. 285.) that he might, and that it was expedient he ſhould do ſo; that office being too high, dangerous, and expenſive to the crown. Upon which, and ſome other motives, the ſaid duke continuing to practiſe againſt the King, he came at laſt

laſt to be beheaded on Tower Hill anno 1521, 13th of the ſame king Henry; ſince whom there was never any high conſtable in England, unleſs for a day or ſo, or upon ſome eminent occaſion. Nevertheleſs the illuſtrious Thomas duke of Norfolk, lord high treaſurer of England, a perſon in great favour with the king, being then earl marſhal, did continue the exerciſe of his office notwithſtanding the ſuſpenſion and vacancy of the conſtableſhip, there being cauſes then depending, particularly between Writheſley then Garter and Benolt Clarencieux, concerning their rights to the funerals of the nobility; which controverſy received large hearings before the ſaid earl marſhal, as appeared by the ſeveral bills, anſwers, replications, &c. remaining in the hands of one Penſon, Lancaſter herald at arms, and exhibited in court by Mr. Noy in his pleading, anno 1622. But this earl marſhal dying anno 1524, the 16th of Henry VIII. within three years after this conſtable, the ſaid cauſe was not concluded by him, but was further debated before Charles Brandon duke of Suffolk, who was the next earl marſhal, as appears by the allegations of Garter, dated the 22d of Henry VIII. and the anſwer of Clarencieux, which are yet extant in the college of arms, and ready to be ſhewn; but this earl marſhal reſigning the ſaid office, 25th Henry VIII. 1533, the ſaid controverſy did not receive a final determination under his adminiſtration, nor by the following earl marſhal Thomas duke of Norfolk, lord high treaſurer, lord high marſhal, and lord high admiral of England, and vice-roy of Ireland, who, though he did not intermeddle in this cauſe, that I can any where find, yet held a court marſhal for the trial of the Lincolnſhire rebels, anno 1535, the 27th of Henry VIII. as is teſtified by the right reverend father in God Gilbert, the preſent lord biſhop of Sarum, and may be ſeen in his hiſtory of the Reformation of the Church of England, part 1. lib. 3. p. 356. which is enough to ſhew, that the marſhal's power of keeping a court was not thought illegal in thoſe days, though there had been now no conſtable for above twenty years; nor was the juriſdiction of this court in the leaſt conteſted.

In the reigns of Edward VI. and Philip and Mary, Edward Seymour duke of Somerſet, and John Dudley earl of Warwick (afterwards duke of Northumberland) being then ſucceſſively earls marſhals: for though I find little done in it for all that time, mens minds being then ſo wholly taken up with controverſies in religion, that ſcarce any regard was had for affairs of this nature, yet the ſenſe of the government concerning the office of earl marſhal and of his juriſdiction may be manifeſtly gathered from the commiſſions of thoſe princes granted to the heralds of thoſe times, the firſt whereof bears date the ſixth of Edward VI. being a commiſſion granted to William Hervey Norroy king of arms, wherein amongſt other things it is particularly provided, that he ſhould viſit and overſee all arms, devices, and cognizances of the nobility and gentry; and if any default was found, to give notice to the king and council, and the marſhal of England that reformation may be made according to the law of arms; that he ſhould enter all deſcents and marriages, and reform all irregularities at funerals, and to take care that all ſuch as ſhould diſobey the orders for funerals then in force, ſhould anſwer thereunto, upon lawful monition, before the earl marſhal of England. An atteſted copy of which commiſſion I have ready to ſhew, taken from the original in the rolls.

In the firſt and ſecond year of Philip and Mary a commiſſion of viſitation was granted to Thomas Hawley Clarencieux to correct all falſe arms, creſts, and cognizances; alſo to take notice of deſcents, and to reform all ſuch as were diſobedient to the orders for funerals ſet forth by king Henry the VIIth. whereby it is alſo provided that all ſuch as ſhould diſobey the ſame ſhould anſwer thereunto, upon lawful monition to him or them given, before the high marſhal of England; where by the way, it is alſo to be noted, that in the ſame commiſſion, reference is had by way of *inſpeximus* to two former commiſſions granted to the ſame Hawley in the 23d of Henry VIII. and the ſixth of Edward VI. wherein the ſame powers were before granted to him. An atteſted copy whereof is alſo ready to be ſhewn.

In

In the fifth and ſixth of Philip and Mary another commiſſion of viſitation was granted to William Harvey, ſucceſſor to the ſaid Hawley, wherein the ſame powers are given him, and in caſe of diſobedience to cauſe the delinquents to anſwer the ſame before the high marſhall of England, and to make fine at his will and pleaſure. An atteſted copy whereof is here likewiſe to be ſhewn.

In theſe two reigns (I ſay) though I do not find the earls marſhals to have intermeddled much, perhaps for the reaſon above-mentioned, yet their juriſdiction all along ſtood unqueſtioned. But in the fifth of Elizabeth 1563, the aforeſaid controverſy between Garter and the provincial kings being re-aſſumed by Sir Gilbert Dethick, Knight, Garter, William Harvey Clarencieux, and William Flower Norroy, it was fully heard and determined by Thomas duke of Norfolk, grandchild of the former duke, then earl marſhal, as appears by the decree itſelf under the ſaid duke's own hand; as it ſtands entered in the partition book D in the office of arms, fol. 244.

Quickly after, in the eighth of queen Elizabeth, anno 1566, the rights and privileges of the earl marſhal's court were ſo highly aſſerted by the lords of the council, that a purſevant being arreſted in London, they immediately wrote their letter for his enlargement to the lord mayor and court of aldermen, ſetting forth that all ſuch as ſhould have occaſion of ſuit againſt the officers of arms, ought to proſecute the ſame before the duke of Norfolk, earl marſhal of England, in the court of his authority and office. Which original letter was extant before the fire of London in the town clerk's office of the ſaid city, and was then conſumed; but there yet remains a copy of it regiſtered in a book in the office of arms marked with a red heart, fol. 82.

In the year following, being the ninth of Elizabeth, there roſe a queſtion concerning the arms of George and Thomas Heneage of Heynton, in the county of Lincoln, it being reported by ſome, and bruited abroad, that the ſaid gentlemen did unjuſtly bear the arms they pretended to. Which queſtion being brought before the ſame Thomas duke of Norfolk

Norfolk, earl marshal, received by him a full hearing and final determination, as appears by the judgment signed with his own hand, in the first or old partition book in the office of arms, fol. 280.

The very next year the controversy between Garter and the provincial kings, some new matters arising, was revived again, and heard before the same earl marshal, who made another decree for the final settlement of it, 10th Elizabeth 1568, under his hand and seal, the original whereof remains in the college of arms, and is ready to be shewn. And this is the decree by which Garter and the provincial kings are guided to this day.

There happened likewise this year a great controversy between the dean and chapter of Westminster, and the kings and heralds at arms, concerning their right to a herse set up in the abbey church; the examination of which matter was by the same earl marshal referred to the marquis of Winchester, then lord treasurer, and the earl of Leicester, as appears by a certificate of the whole proceedings under the hands and seals of the said lords, dated 24th Feb. anno 1568, whereupon it received a final determination the year following, anno 11th Elizabeth: the originals of which certificate and judgment are ready to be produced, as also copies of the whole proceedings well attested by a publick notary, then register of the court, and entered in a book in the office of arms marked L. 2. from p. 45 to p. 52.

Moreover, how highly the jurisdiction of this court was asserted by the prince about this time, appears by a commission of visitation, dated 24th March 10th Eliz. granted to Robert Cook then Clarencieux king at arms, wherein the same powers are given concerning arms, descents, and funerals, as to his predecessors above-mentioned, in the times of Edward VI. and Philip and Mary; and in case any manner of scruple, doubt, or question, or any misdemeanour of any person or persons whatsoever happen, that cannot conveniently be decided by the said Clarencieux, it is provided, that he shall command such person or persons whom the

said

ſaid queſtion or miſdemeanour ſhall concern, under a certain pain, at a certain day to appear before the earl marſhal of England for the time being, before whom the ſaid ſcruple, queſtion, or miſdemeanour ſhall be heard and ordered according to the law and cuſtoms of arms in that caſe provided, and of ancient times uſed; any ſtatute, law, proclamation, or uſage to the contrary in any-wiſe notwithſtanding. An atteſted copy whereof is ready to be ſhewn.

The title, honour, and barony of the lord Dacres of Gilleſland and Greyſtock came alſo in queſtion the ſame year, and was firſt brought before the ſame earl marſhal; but becauſe the duke was both father-in-law and guardian to the coheirs, for avoiding all manner of ſuſpicion of favour, his grace became humble ſuiter to her majeſty (that though the trial thereof of very right did appertain and belong to himſelf by reaſon of his office of earl marſhal of England, as a matter incident to be tried, decided, and judged before him in reſpect of his ſaid office of long time uſed and accuſtomed) that ſome of her highneſs council might be by her grace appointed to hear, determine, and judge of the right and title of the ſaid barony. Whereupon it pleaſed the queen's majeſty, by the full conſent, aſſent, and agreement of the ſaid duke, to direct her highneſs's commiſſion to the lord marquis of Northampton, the earl of Pembroke ſteward of the houſehold, the earl of Arundell, and the earl of Leiceſter, giving them thereby authority to hear, determine, and adjudge the controverſy aforeſaid according to equity and right; with a ſpecial proviſo, and ſaving always, that the ſame ſhould not be by any manner of means prejudicial to the ſaid duke, but that in ſuch like caſes of debate and controverſy, which at any time hereafter ſhall happen and come in queſtion, the ſaid duke by virtue of his office of earl marſhalſhip may hear, determine, and adjudge the ſame, as though this commiſſion had never been granted; which cauſe was fully heard and determined by the aforeſaid marquis and earls at Greenwich the 12th and 19th of June 11th Elizabeth, as appears by the judgment which was ordered by the ſaid lords

lords commiſſioners to be delivered into the office of the heralds and officers of arms, there to be fully aud wholly enrolled and recorded without any manner of addition or diminution; where I accordingly find it entered in a great book at the office of arms, marked W. G. from fol. 200 to fol. 206. Whereof there is alſo a memorial ſtill preſerved in a manuſcript of judge Hales's at Lincoln's-inn. Tit. nobility. A copy whereof I can readily ſhew whenever it ſhall be required.

There were ſome few other controverſies of the like kind that received determination in this earl marſhal's time, but he dying quickly after in anno 1572, 14th of Elizabeth, George earl of Shrewſbury became the next earl marſhal by patent, bearing date the 15th of Elizabeth, during whoſe earl marſhalſhip the controverſy between the two Leighsof High-leigh in Cheſhire, concerning their arms, received a full hearing and final determination, as appears by the ſentence itſelf and the ſaid earl marſhal's mandate to Norroy king of arms and Somerſet herald, his marſhal, willing and requiring them of this his ſentence, doom, and determination to take knowledge, and the ſame to record in the books and regiſters of the office, where I find it accordingly entered in Glover Somerſet's Cheſhire, as in its proper place, fol. 299.

After the death of George earl of Shrewſbury, which happened 32 of Elizabeth, A. D. 1590. the earl marſhalſhip was exerciſed by commiſſion given to William lord Burleigh, lord high treaſurer, Charles lord Howard Effingham, lord high admiral, and Henry lord Hounſdon, lord chamberlain of the houſehold, the 34th of Elizabeth anno 1592. Before whom ſeveral cauſes were tried and determined proper to this court, and amongſt them that great cauſe betwixt the earl of Kent, plaintiff, and George Rotheram, Eſquire, and William Dethick, Garter, defendants, for the barony of Ruthin, which received a formal proceeding and final determination from them, as appears by their ſentence; the original whereof was extant, and exhibited in court by Mr. Noy in his pleading, anno 1622, and a copy whereof is ſtill preſerved in the college of arms ready to be ſhewn.

Which commiſſioners continued the adminiſtration of the office of earl marſhal but to the 28th of December 1597, when Robert earl of Eſſex was ſolemnly created earl marſhal of England by the queen's majeſty at Whitehall, in whoſe time there happened a quarrel between Anthony Felton and Edmund Withipol for a diſgrace by baſtinado offered by the ſaid Edmund to the ſaid Anthony; which cauſe was firſt judicially heard at Whitehall in April, anno 1598, and in May following received a ſecond hearing and final determination by the earl marſhal, who calling to his aſſiſtance divers lords, knights, &c. did order and decree, as appeareth by the judgment under his hand and ſeal in a large book in the office of arms marked W. H. fol. 414.

In the ſame earl marſhal's time, and in the very ſame year, there aroſe a controverſy between Mr. Edmund Nevill, and the lady Jane for the barony of Abergavenny; for the receiving of whoſe claims a court of chivalry was called Feb. 15th at Eſſex-houſe, where and when the earl marſhal craved the aſſiſtance of divers lords, one of the lord chief juſtices, and ſome other judges of the common law. Before whom the parties appearing with their council, ſuch as Mr. Attorney General, Mr. Serjeant Williams, &c. the matter was opened at large, as appears by the minutes of this court ſtill preſerved in the college of arms, in a book marked W. H. fol. 409. which was then adjourned to another day; the earl marſhal in the time adviſing with the two lords chief juſtices, as appears by ſeveral queſtions he ſent to them by William Clarencieux, who returned their anſwers accordingly, making no doubt of the validity of his court; which queſtions and anſwers of the ſaid lord chief juſtices are ſtill extant in the poſſeſſion of Sir Henry Saint George now Clarencieux king at arms, under Mr. Camden's own hand.

But the earl of Eſſex being ſent over into Ireland, and not living long after his return, no further proceedings in this cauſe were had before him; however the juriſdiction of the earl marſhal's court, in the vacancy of a conſtable, receives ſo much benefit by it, that it is plain it then

ſtood fair in the eye of government, the lord chief juſtice, the other judges and eminent common lawyers all aſſiſting at it, and not at all doubting of the authority of the court, notwithſtanding there had been no conſtable in effect (ſince the diſclaimer of king Henry VIII. in the firſt year of his reign) for above fourſcore years.

After the death of the earl of Eſſex there was a commiſſion granted by the queen's majeſty to Thomas lord Buckhurſt, Charles earl of Nottingham, lord high admiral, and Edward earl of Worceſter maſter of the horſe, for the execution of the office of earl marſhal of England; during whoſe adminiſtration Robert Treſwell Somerſet herald was arreſted in London, contrary to his privilege, by William Smith and William Lane, at the ſuit of Margery Ficther, about a pall of velvet which had been uſed at the funeral of the lord Mordant, whereof complaint being made in the houſe of Lords by the earl of Worceſter, the parties were ſent for, in cuſtody of a ſerjeant at arms, to appear before the houſe of lords, Dec. 4th 1601, where, after the matter had been debated for ſome time, it was at laſt, viz. on the 8th of December following, referred to her majeſty's commiſſioners for thoſe cauſes that concern the earl marſhal's office, to be determined by their lordſhips, as appears by the orders of the lord's houſe of the third and eighth of December 1601, copies whereof are ready to be ſhewn, ſigned by the clerk of the parliament, by which orders the proceedings in this cauſe in the King's Bench were ſtopt, though ready for trial, and the juriſdiction of the earl marſhal's office vindicated by parliament.

Upon the death of queen Elizabeth, and king James's coming to the crown, Edward earl of Worceſter was made earl marſhal for the day of the coronation, which being over, his majeſty joined others in commiſſion with him for the execution of that office, viz. Lodowick duke of Lenox, and the earls of Dorſet, Nottingham, Suffolk, Devonſhire, and Northampton, in whoſe time a queſtion was moved in the houſe of Lords concerning the precedency of the baronies of Abergavenny and Le Deſpencer, which their lordſhips

lordſhips referred to the examination and conſideration of the lords commiſſioners for cauſes belonging to the office of earl marſhal of England; who having called unto them the principal heralds and other officers at arms, and received information from them, as alſo conſidered of ſundry ancient records pertaining thereunto, did ſet down under their hands and ſeals, their order and judgment touching the proceedings and preheminences of the ſaid baronies, which was read this preſent ſixth of July in the houſe, and was generally approved of by the lords; and thereupon was ordered to be regiſtered in the journal books of the parliament, where the ſaid orders of the lords, and a copy of ſaid ſentence yet remain entered, as appears by the journals of the ſixth and ſeventh of July, anno 1604. 2 Jac. I. copies of which are ready to be ſhewn, ſigned by the clerk of the ſaid houſe. The lord Abergavenny notwithſtanding, not being fully ſatisfied, moved the lords commiſſioners for another hearing, which, though they granted, yet not finding ſufficient ground to alter their former ſentence, they confirmed it again under their hands; which laſt ſentence remains alſo upon the journals of the houſe of lords of the ſame date as above; where we find alſo the juriſdiction of the earl marſhal of England confirmed again in parliament in this king's reign.

In the tenth of the ſame king James, one William Penſon preferred a bill in chancery againſt Sir William Seager, garter king at arms, and others, for a part or ſhare of the profits dividable among the heralds, intituling himſelf thereto by a grant of the office of Cheſter herald, which he had ſurreptitiouſly gotten a patent for, under the great ſeal: whereof the lord chancellor Elleſmere being ſufficiently informed by the lords commiſſioners for the earl marſhal's office and the defendants, and that the ſaid Penſon had his coat pulled off his back for the ſaid miſdemeanour in his majeſty's cloſet, did order that the ſaid matter ſhould be abſolutely diſmiſſed out of this court with forty ſhillings coſts, and the plaintiff left to attend the ſaid lords commiſſioners for marſhal cauſes, if he ſhall think meet. A copy of which

diſmiſſion of the ſaid cauſe out of the ſaid court of chancery, to the court marſhal, I have ready to ſhew, ſigned by one of the deputy regiſters of the chancery.

The year following there alſo happened a controverſy between Ralph Brook, plaintiff, and Henry Saint George, defendant, in the court of chancery for fees ariſing and growing by virtue of their offices as heralds; to which the defendant demurring, it was ordered, that unleſs the plaintiff ſhould ſhew unto the court good reaſon within a time prefixed, why the cauſe ſhould not be thence diſmiſſed to be decided before the lords commiſſioners for the office of earl marſhal, as a matter moſt proper to be decided in their court, that then the defendant's demurrer ſhould ſtand: and the plaintiff at the time of the order alledging, that there was no ſuch court as the earl marſhal's court, but the court of the conſtable and marſhal, which could only be held at ſuch a time as there was a conſtable or comiſſioners for that office; upon opening the matter by Mr. Francis More, the court was of opinion that the ſaid commiſſioners for the earl marſhalſhip of England had power to examine the matter in controverſy; whereupon it was ordered that the matter ſhould from thence be clearly diſmiſſed as moſt proper to be decided before the ſaid lords commiſſioners. A copy of which diſmiſſion I have ready to produce, ſigned by the ſame deputy regiſter. Which two diſmiſſions out of the court of chancery to the earl marſhal's court do ſufficiently evince, that it was eſteemed a legal court in thoſe days, notwithſtanding the ſame allegation was then made in abatement of its juriſdiction, that now is.

Add hereunto, that on Thurſday the 26th of April 1621, in the 19th year of the ſame king James, one Sir Francis Mitchell was accuſed in the houſe of lords by the houſe of commons, viz. that he had erected an office upon two commiſſions touching gold and ſilver thread, kept a court, made officers, and divers unwarrantable orders, and exacted bonds for the obſervance of ſame; whereof being convicted, the lords ſpiritual and temporal did award and adjudge, amongſt other penalties (the ſentence being pronounced by

by the then lord chief juſtice) that the ſaid Sir Francis Mitchell ſhould ſtand, and be thenceforth degraded of the order of knighthood, and the ceremonies of degradation to be performed by direction of this court, to the earl marſhal's court, as appears upon the journals of the houſe of lords of the fourth of May 1621, which accordingly was performed the 20th of June following in a court marſhal held in the King's Bench court in Weſtminſter Hall before Edward earl of Worceſter, lord privy ſeal, Lodowick duke of Lenox, lord ſteward of the houſehold, George marquis of Buckingham, lord high admiral, and Thomas earl of Arundel and Surry, primier earl of England, then lords commiſſioners for the office of earl marſhal. The whole manner whereof is ſet down in a book in the office of arms, marked W. H. from fol. 467 to fol. 468. In which proceedings theſe three things are chiefly to be obſerved. Firſt, that both lords and commons agreed and acquieſced in the ſentence; ſecondly, that the lord chief juſtice pronounced it; and thirdly, that it was executed in the King's Bench court in Weſtminſter Hall; which ſets forth to us a joint concurrence of both houſes of parliament, and of the common law itſelf, in avowing this court to be legal and of ſufficient authority, without a conſtable, in the moſt publick manner that could be contrived.

Quickly after, on the 29th of Auguſt 1621, anno 19 James I. Thomas earl of Arundel and Surrey, to the great ſatisfaction of all good men, was made earl marſhal of England: in the very beginning of whoſe adminiſtration the very ſame effort was made upon the juriſdiction of this great office, that now is by means of the ſame Ralph Brook above-mentioned and Robert Treſwell, the former whereof having for divers miſdemeanours been ſuſpended from the execution of his office by the lords commiſſioners ever ſince Jan. 1620, and the latter alſo ſuſpended by them from any receipt of his dividends of the fees of the office, till he ſhould conform himſelf to the orders of it, and both refuſing to ſubmit either to the orders of the lords commiſſioners, or of the office, and thinking to repoſſeſs themſelves of their places

and

and profits by some other course, did commence divers frivolous suits, first at common law against their fellow officers; but failing of their expectations at common law, they exhibited a bill in Chancery, dated ninth of October 1621, against Sir Richard St. George, knight, Norroy king at arms, and Henry St. George, Richmond herald, alledging they had received great sums of money, of which they were to have a dividend part, and for that they were left remediless by course of common law or laws marshal of this realm, by reason there is no court of constable and marshal; wherefore they desired that the defendants might be called into that court, and answer upon their oaths what fees and profits they had received from the last of April 1620 to the date of the bill, wherein the plaintiffs ought to have the share. To which the defendants demurred for these causes; first, because both plaintiffs and defendants were Heralds; and secondly, because the matters in question were for fees incident to their offices, which according to the orders of the lord chancellor Ellesmere were matters heretofore dismissed out of this court to be determined by the lords commissioners for the office of earl marshal, as most proper to be decided in that court.

But Brook and Treswell, nothing pleased with this demurrer, and resolving to put the matter home, to overthrow the power of the earl marshal, and shake his authority, as they termed it, moved the court, that in case the defendants did not shew good cause within a time prefixed, that then they should make a direct and perfect answer to the plaintiff's bill, according to which order the defendants came into court; where upon opening the matter by Mr. Noy, the court, in regard the matter in hand seemed a point of jurisdiction, and not of debt, as the plaintiff's council would have had it, would not give order (the master of the Rolls, and Mr. Justice Jones being only in court) but left the further consideration and absolute decision to the lord keeper. Whereupon his lordship made several references of the matter: first, to the earl marshal; secondly, to two of the king's learned council at law, whereof

whereof Mr. Attorney General to be one; but neither of theſe references pleaſing the plaintiffs, they obtained a third, November 30th 1621, which was to the two lord chief juſtices, Mr. James Lea, lord chief juſtice of the King's Bench, and Sir Henry Hobart, lord chief juſtice of the Common Pleas; whereupon the ſaid lords appointed Tueſday 11th of December at two in the afternoon at Serjeant's-inn in Fleet-ſtreet, in the chamber of the chief juſtice of the Bench, to hear the ſaid cauſe.

Upon this the defendants, apprehending that the cauſe now related rather to the earl marſhal than themſelves, acquainted him with it, and what was about to be done; who was ſo ſenſible of it, that he thought fit to ſend a meſſage to the chief juſtices to inform them that he underſtood the matter concerned him in the juriſdiction of his court, and that his lordſhip ſaw no cauſe of any attendance on his part in that buſineſs, and that there needed not any ſuch haſte in the proceeding thereof, as his lordſhip conceived. However the chief juſtices, the plaintiffs council, and the meſſenger had ſome debate upon the matter, wherein the lord chief juſtices both owned the earl marſhal's court to be a very great and honourable court, and of great antiquity, and were of opinion, that if the plaintiffs had not firſt begun their complaint before the earl marſhal, they had done ill; wherefore they jointly forbore to proceed any further, ſaying, that though the lord keeper was pleaſed to refer this point of juriſdiction to their cenſure and opinion, yet underſtanding by the meſſage ſent them by the earl marſhal, that his lordſhip did not agree to it, they therefore dared not to preſume to meddle in the matter, or give any opinion therein without both their agreements.

In the mean time the earl marſhal acquainting the king with the whole buſineſs, his majeſty directed his letter to the lords of the council, dated Newmarket, December 8, 1621, requiring them to take this matter into their preſent and ſerious conſideration, and that if upon hearing what ſhould be alledged by the earl marſhal, or any for him,

him, the ſaid Brook and Treſwell could not clear themſelves of thoſe inſolencies and contempts offered the earl marſhal, and his juriſdiction, they ſhould take an exemplary courſe of puniſhing them, to deter others from the like attempts hereafter; withal telling them, that he took his honour to be engaged, to defend the power and reputation of that court, which is of ſo high a nature, ſo ancient, and ſo immediately derived from himſelf the fountain of all honour. Which letter ſtands entered in the book for council cauſes upon Dec. 12, 1621; upon receipt of which letter by the lords of the council, their lordſhips appointed Friday the 14th of December following in the afternoon, in the council-chamber at Whitehall, to hear the matters, commanding all parties to be there, and give their attendance; where alſo were Mr. Noy and Mr. Whitfield, two counſellors at law, who came on behalf of the earl marſhal, who, after the lords were ſat, did ſet forth the inſolent and contemptuous behaviour of theſe men toward the earl marſhal, and the juſt authority of his court in ſuch cauſes, ſo plainly, that their lordſhips concluded that the earl marſhal had full power to determine all matters of difference amongſt heralds for fees and all other incidents of their offices, and that it was plainly proved that the plaintiffs had conteſted the earl marſhal's power and authority, &c. They cauſed a warrant to be drawn for their commitment to the Marſhalſea, where, after they had remained three weeks, Treſwell ſubmitted himſelf to the earl marſhal by an humble acknowledgment of his offence, and was ſet at liberty. But Brook perſiſting in his obſtinacy, continued ſtill (though in priſon) to bring actions againſt his brethren in the Common Pleas, viz. one againſt the three kings of arms, another againſt Samſon Lennard, Blewmantle, and a third againſt John Philpot, Rouge dragon, and theſe all for fees of his office, ſtill derogating from the honour and power of the earl marſhal's court; which actions ſtand entered in the ſecond prothonotaries office in the court of the Common Pleas; certificates whereof, upon intimation given of them, were immediately ſent for by the council.

During

During this conteſt of his power, the earl marſhal it ſeems had delayed all manner of proceedings in his court, upon which the king, about the time that the lords of his council had ſent for the certificates of the cauſes commenced in the Common Pleas, writes another letter to them, dated at Greenwich the 25th of June in the 20th year of his reign, giving them to underſtand, that whereas the earl marſhal had delayed to proceed in ſome cauſes depending before him, the reaſon whereof he found to be in reſpect that divers doubts and ſcruples had been caſt forth, whether the earl marſhal was a judge without a conſtable, &c. That he therefore as ſupreme judge, did require them to take this point into their ſerious conſideration, and to hear what ſhould be produced by the earl marſhal, and prepare it for a ſummary hearing before him (the king) in perſon in caſe need ſhould be. Upon the receipt of this the lords of the privy council called for the prothonotaries certificates of the cauſes, which when their lordſhips had read, and found they were for fees, they cauſed a peremptory order to be drawn for the ſtay of the proceedings in that court till further direction from their board, ſtrictly requiring that no attorney or other officer of the ſaid court of Common Pleas, nor any other ſubordinate miniſter towards the law, ſhould move or do any act or thing for the further proceeding in thoſe cauſes, of which they were thereby to take notice at their peril. A copy of which order, ſigned by one of the clerks of the council, is ready to be ſhewn.

At the ſame time of their making this order, their lordſhips appointed a day for the hearing of the matter at large concerning the power and juriſdiction of the earl marſhal now in queſtion, which they appointed to be on Thurſday the 11th of July 1622, in the afternoon in the inner Star Chamber, where the council often ſat in thoſe days. Whither at the time appointed came a great number of lords and others of the privy council, viz. the lord keeper, the lord treaſurer, the lord preſident of the council, the lord privy ſeal, the duke of Lenox, the marquis of Hamilton, the lord chamberlain, Mr. Treaſurer of the houſehold, Mr. Secretary Calvert, the maſter of the Rolls, Sir John Suckling, and Sir

Edward Conway, where alſo Sir Thomas Coventry, knight, his majeſty's attorney general, Mr. Noy, and Mr. Whitfield, attending the buſineſs as council for the earl marſhal, were called in; by whom the authority of the earl marſhal ſeverally, as well as jointly with a high conſtable, was ſo fully ſet forth (a copy of which pleading is yet extant) that the lord keeper, as mouth of the reſt of the council declared, that the authorities brought and alledged by the council were ſo very good, that it was plain the earl marſhal was a judge, and had power of judicature in the vacancy of a conſtable, as well as with the conſtable, and that there had been as much ſaid to prove the authority of that court, as could be ſaid for any court in Weſtminſter Hall, of all which in particular the council then agreed to certify his majeſty.

Upon report whereof to the king, his majeſty was pleaſed to iſſue forth his commiſſion under the great ſeal of England, dated at Weſtminſter, Auguſt 1ſt, in the 20th year of his reign, directed to our right truſty and right well beloved couſin and counſellor, Thomas earl of Arundell and Surry, our earl marſhal of England, greeting; where, after recital that he had been informed that he (the earl marſhal) had delayed to proceed judicially in ſome cauſes before him depending in the court marſhal by reaſon, that ſome doubts had been divulged that the earl marſhal was no judge, nor could hold a court without a conſtable, &c. We held it fit (ſays the king) in a caſe of ſo great weight, to proceed with extraordinary deliberation, and having now, both by ourſelf and the whole body of our council, received ample ſatisfaction by many and clear proofs, that the conſtable and marſhal were joint judges together, and ſeveral, in the vacancy of either; we do hereby authorize, will, and command you our earl marſhal, that from henceforth you proceed in all cauſes whatſoever whereof the court of conſtable and marſhal ought properly to take cognizance, as judicially and definitively as any conſtable or marſhal of this realm, either jointly or ſeverally, heretofore have done; and that you do by all means endeavour to reſtore and ſettle the honourable proceedings of that court in all the rights thereunto belonging; for which our pleaſure is, that you

aſſiſt yourſelf as much by antient records and precedents as you may, &c. Which commiſſion yet remains in the ſignet office, a copy whereof is ready to be produced; in which form all the commiſſions or patents of all the earl marſhals, or commiſſioners for the earl marſhal, have been drawn ever ſince.

In purſuance of which commiſſion, the ſaid earl marſhal held a court of chivalry or court marſhal in the painted chamber at Weſtminſter, on the 24th of November *anno* 1623, *annoque* R. Jac. I. 21°. where a cauſe againſt one Sir Thomas Harris, touching his quartering of the arms of other families with his own, was firſt promoted by Sir Francis Kinnerſley, and both proſecutor and defendant did put in ſtipulations to proſecute and appear, and abide the orders of the court, &c. as in all other cauſes which now were daily brought thither, whereof ſome were againſt certain painters and other tradeſmen at the inſtance of the king himſelf, who ſent his mandate to the earl marſhal, dated at Theobald's, 19° September 22° Jac. I. ordering, that whereas complaint had been made to him, that certain painters and other tradeſmen of the city of London, and of the other parts of the kingdom, have of late taken the boldneſs of themſelves to paint and marſhal the coats of arms for the funerals of divers perſons, whereby the officers of arms were not only dammified, but many foul abuſes and wrongs daily perpetrated, to the great ſcandal of the antient nobility and gentry of the realm; that for the ſpeedy redreſs of this miſchief, he (as to his office of earl marſhal of right appertaineth) ſhould cauſe all ſuch perſons as ſhould be found offenders in caſes of this nature to appear before him, and, according to the quality of their offences, to cauſe them to receive due puniſhment by impriſonment or otherwiſe. Which original mandate under the king's own hand remains in the herald's office in the book marked W. K. fol. 17.

Notwithſtanding all this, the ſame Ralph Brook abovementioned, York herald, animated by ſome turbulent *Leguleii* of that time, on the 20th of May anno 1625, 1° Car. I.

preferred another bill in chancery againſt Thomas Bartholomew and Benjamin Agar, defendants, ſuing them for fees due to him upon the creation of certain knights; to which the defendants demurring, the matter was referred to judge Dodderidge to conſider (upon hearing both parties) whether the ſaid demurrer was ſufficient; who accordingly having heard the ſaid parties, did certify to the then lord chancellor, that in regard the cauſe of ſuit was for fees due to him as a herald, upon the making of knights, the cognizance of the matter did properly lie before and under the determination of the right honorable the earl marſhal of England: which certificate is ſtill preſerved in the college of arms, ſigned (as it is believed) with the ſaid judge Dodderidge's own hand, in the book marked W. H. fol. 525. From which time forward, to the breaking out of the civil war anno 1641, the earl marſhal tried all ſorts of cauſes lying before him without the leaſt interruption, not one privy ſeal being taken out for all that time to ſtop either himſelf, or his lieutenants, in any of their proceedings, and there was but one complaint or appeal made to the king from any of his judgments, which too was not reverſed, but confirmed by the king 1° Car. I. notwithſtanding the cauſes in this earl marſhal's time were ſo very numerous, that formerly, as it appeared by the acts of court, more than ſixty cauſes have been depending at a time; ſo careful was he in receiving any cauſe that belonged not ſtrictly to him, and in acting uprightly in all his proceedings and definitive ſentences.

Who dying anno 1646, Henry Howard lord Maltravers, now earl of Arundel and Surrey, both by right of inheritance, and by virtue of a patent bearing date 1° July 15° Car. I. anno 1640, granted in his father's life-time, became earl marſhal of England. But the civil war continuing, and he dying quickly after in anno 1652, nothing was done in his time, nor during the uſurpations of Oliver and Richard Cromwell, or the following governments: this office as it were ſleeping till the happy reſtoration of king Charles the ſecond, who granted a commiſſion dated May 26, 14°

Car.

Car. II. anno 1662, to George duke of Albemarle, Henry marquis of Dorcheſter, Edward earl of Mancheſter, and Charles earl of Carliſle, and others for the execution of this office, in whoſe time there happened a cauſe ſo very pertinent to our preſent purpoſe that I cannot paſs it by; which in ſhort was this: one Henry Parker, painter-ſtainer, of London, having painted the atchievements, great banner, and banner-rolls, and other enſigns of honor for the funerals of the then lord Paulet's lady, and of the right honorable Charles lord Gerard of Gerard's Bromley, and marſhalled their funerals, without the appointment or allowance of Sir Edward Walker then garter king at arms: he the ſaid garter made his complaint againſt him, by way of petition to the ſaid lords commiſſioners, ſometime in January 1667. Whereupon the ſaid Henry Parker being ſummoned by the ſaid lords commiſſioners, appeared before them on Friday the 24th of the ſame month, at which time the petition of garter being read in the preſence of the ſaid Parker, and his uſurpation upon the office of the ſaid garter duly proved againſt him; he was (upon his refuſal to ſubmit himſelf, and to promiſe not to offend again in like manner) committed by their lordſhips warrant priſoner to the Marſhalſea.

But the next morning motion being made by his council in the court of king's-bench for a writ of Habeas Corpus, the ſame was granted, and by virtue thereof the ſaid Parker was brought to the bar of that court on Monday the 27th of the ſame month, where his council made objections againſt the legality of the commitment; alledging, that the ſaid lords commiſſioners had not lawful power and authority for what they had done; whereupon it was moved by council on behalf of the ſaid lords, that the court would aſſign a day when council might be heard on their lordſhips part, for aſſerting their power, and that Parker might be remanded to priſon until that time; which being granted by the court, and the laſt day of the ſaid month appointed for that purpoſe, the ſaid Parker was again brought into court, and by his council made the like objections

objections as before, averring that the ſaid earl marſhal or lords commiſſioners for that office, had not any juriſdiction or power to hold a court of themſelves without a conſtable.

But the council on behalf of the lords commiſſioners ſo fully proved the power and authority of the earl marſhal, in the vacancy of a lord high conſtable, that the court being well ſatisfied with what had been alledged in the behalf of the ſaid lords, remanded Parker back again to priſon, admoniſhing him to apply himſelf to the ſaid lords commiſſioners, by an humble ſubmiſſion and acknowledgment of his fault, with promiſes not to tranſgreſs in the like for the future. Moreover the ſaid judges then declared their opinion, that no painter ought to meddle in preparing any arms or enſigns of honor for any public funeral, without order and direction from the kings or officers of arms reſpectively; unto whom, by virtue of their offices, it belongs for the time being. Whereupon the ſaid Parker on the ſecond of February following, through the interceſſion of Mr. Juſtice Windham being admitted to make his ſubmiſſion, obtained a warrant from the ſaid lords commiſſioners for his enlargement, which being delivered to the keeper of the priſon, and he the ſaid Parker brought next day to the king's-bench bar, the court declared he might go at liberty, being none of their priſoner.

In theſe lords commiſſioners time, there were alſo other great irregularities daily committed in the funerals of perſons almoſt of all qualities; for the remedy of which abuſes, the ſaid lords commiſſioners did ſettle the trophies and ſtates for the funerals of all degrees, as appears by their original orders dated November 22, 20 Car. II. anno 1668, under their hands and ſeals, now remaining in the office of arms, and ready to be ſhewn; which orders are the rule by which all the officers of arms are now guided.

In ſhort, the whole power of the conſtable ſeems now inveſted in the marſhal alone, not only in holding a court, in hearing and determining all deeds and matters of arms, and other uſages and cuſtoms to the ſame matters pertaining, whether directly relating to the officers of arms, or

ſome

ſome way incident to their offices; but in other matters alſo heretofore jointly in the power of the conſtable and marſhal, which now are veſted in the marſhal alone, ſuch as are the choice and nomination of the officers of arms, the making of a *Series ordinum*, and ordering all proceedings of ſtates, as at coronations, &c. which were formerly in the conſtables jointly with the marſhals, but are now ſolely in the marſhal's power, witneſs the choice and nomination of all the preſent officers, the *Series ordinum* made by the lords commiſſioners for the marſhal's office temp. Eliz. and the proceedings of ſtate at the coronation of king James the firſt; whereof the original yet remains in the college of arms.

And thus, Sir, I think I have ſufficiently made it appear from the practice of the times immediately after the office of the lord high conſtable was extinguiſhed; from the ſentiments and patents of all the princes ſince that time; from the orders of privy-council; from orders and acknowledgments of parliaments; from diſmiſſion of cauſes from other courts to this court; from the opinions and acknowledgments of many judges and other eminent practitionersin the common law; and from divers original inconteſted proceedings and ſentences in the ſaid court, in all times ſince the extinction of the office of high conſtable till within memory: I think, I ſay, from theſe I have made it moſt evidently appear, that the juriſdiction of the earl marſhal has always been eſteemed valid, notwithſtanding the vacancy of a lord high conſtable, for now near an hundred and fourſcore years.

Nor in all this time was there ever any prohibitions ſent from any other courts to ſtop the proceedings of this: no other way (until now) being ever thought or heard of, but that of privy-ſeals, which method was introduced the 13th of Richard IId. There were, it is true, other ſtatutes made before that time, whereby it was intended, that the conſtable and marſhal ſhould be reſtrained in their proceedings, viz. one in the 28th of Edw. I. chap. 3. whereby it was ordered, that whereas the marſhal did hold pleas of freehold,

freehold, debt, treſpaſs, and contracts between the king's people, he ſhould henceforth do ſo no more. Again, by a ſtatute of the 8th of Rich. II. chap. 5. it was enacted, that whereas divers pleas belonging to the common law were of late drawn before the conſtable and marſhal; that all pleas and ſuits touching the common law, which ought to be examined and diſcuſſed at the common law, ſhould not be drawn or holden by any means before the ſaid conſtable and marſhal, but that the court of the ſame conſtable and marſhal ſhould have that which belongeth unto the ſame court, and that the common law ſhould have that which to it belongeth.

Nevertheleſs, there being no way as yet expreſly preſcribed, either by cuſtom or the aforeſaid ſtatutes, how irregular proceedings ſhould be ſtopt in this court, thoſe two great men, Thomas of Woodſtock duke of Gloceſter, &c. the king's uncle, and Thomas Mowbray duke of Norfolk, the king's near kinſman, being conſtable and marſhal, did by their great power break through thoſe laws, and ſtill continued to hold pleas in all things as before. Whereupon the commons, complaining to the king that the conſtable and marſhal's court had drawn to itſelf, and did daily encroach to itſelf contracts, covenants, treſpaſſes, debts, detinues, and many other actions pleadable at the common law of the land, to the great prejudice of the king, and of his courts, and to the great grievance of the people of the realm; did petition, that it would pleaſe the king to ordain, that that court might not take cognizance of any manner of contract made within the kingdom of England, which might be tried by the common law, ſaving only contracts touching arms, which cannot be tried by the common law. The king hereupon January 17, in the 13th year of his reign, did make an order touching the extent of the juriſdiction of this court, joining thereunto a method how it ſhould be ſtopt in its proceedings, in caſe it ſhould hereafter attempt any thing not belonging to it; an atteſted copy of which petition and order I have ready to ſhew: which being after confirmed in parliament, is

that

that ſtatute of limitation of the conſtable and marſhal's power 13ht Rich. II. chap. 2.

Whereby it is provided, that if any will complain that any plea be commenced before the conſtable and marſhal, that might be tried by the common law of the land, the ſame complainant ſhould have a privy-ſeal of the king, without difficulty, directed to the ſaid conſtable and marſhal, to ſurceaſe in that plea; till it be diſcuſſed by the king's council, if that matter ought, and of right pertaineth to that court, or otherwiſe to be tried by the common law of the realm of England: and alſo that they ſurceaſe in the mean time. According to which ſtatute this court has been regulated in all ages down to this time, whenever it has exceeded its juriſdiction, as in that great cauſe betwixt Pountney and Berney, mentioned in the year books of the 14th of Hen. IV. fol. 4 and 5. the which I the rather inſtance, becauſe it was quickly after the making the ſtatute, when they beſt underſtood the intention of it, and was of that difficulty, that the lords of the council did indeed refer its conſideration to the judges of the realm, before whom it was debated in the exchequer-chamber; where it was determined, that the plea of the matter in hand did appertain to the common law: but let it be noted by the way, that it came not thither by any other method, as the year books teſtify *loco citato*; but by the mediation of a privy ſeal obtained by the defendant Berney, and direction of the king's council, before whom (or ſuch as they ſhall appoint) ſuch matters by the ſtatute are ordered to be diſcuſſed.

But now we are told, that the ſtatute including no negative words in it, it not being there ſaid that the conſtable and marſhal ſhall be ſtopt by a privy ſeal, and no otherwiſe; that they may as well be ſtopt by a prohibition ſent immediately from any of the courts of Weſtminſter-Hall. To which I anſwer, that this were true indeed, could it be proved that prohibitions had been ever uſed before this ſtatute; it being a rule in law, that the affirmative words of a ſtatute do not change the common law, or alter a precedent power or intereſt: but I fear our adverſaries will be

ſo very far from a poſitive proof, that prohibitions were ever ſent to ſtop the proceedings of the conſtable and marſhal before this ſtatute, that they will fail of rendering it ſo much as poſſible; for could this have been done, there had been little need of this ſtatute at all; nay, indeed the whole had been uſeleſs and frivolous: wherefore I doubt not but this ſtatute, though only affirmative, ought to be eſteemed as excluſive to all other methods (as I queſtion not it will with all indifferent judges) as if there had been negative words put in for that purpoſe.

Beſides, I find it a ſort of maxim in common law, that where an affirmative in a new law doth give power and intereſt to a perſon certain, or order a thing to be done before a perſon incertain, in this caſe *incluſio unius eſt excluſio alterius*. Dr. Foſter's caſe, co. 11. But it is plain that this affirmative ſtatute doth give power and intereſt to a perſon certain, viz. to the king, to grant a privy ſeal without difficulty, &c. and order a thing to be done before perſons incertain, viz. the king's council, to diſcuſs whether that matter ought, or of right pertaineth to that court, or otherwiſe to be tried by the common law of the realm of England, and they (the conſtable and marſhal) to ſurceaſe in the mean time. Therefore this affirmative ſtatute, that ſuch pleas as are commenced before the conſtable and marſhal that might be tried by the common law of the land, ſhall be ſtopt by a privy ſeal, doth exclude all other methods, though no negative words to that effect be expreſſed therein.

I know it has and will be objected, that the cauſes againſt which the prohibitions now in queſtion were ſent, are ſuch as may be tried at common law by an action upon the caſe, as in the action of Sir William Dugdale, knight, Norroy king at arms, brought againſt Randall Holmes of the city of Cheſter, painter, at the aſſizes at Stafford, term° Hillarij, 19° Car. II. anno 1667, for marſhalling the funeral of Sir Ralph Aſhton of Middleton in Lancaſhire, which ſuit was commenced againſt him by an action upon the caſe, and accordingly tried and determined at the common law;

law; to which I anſwer that as to the matter of fact, that the ſaid cauſe was ſo tried and determined, is very certain, but that it was ſo done out of neceſſity and not of choice, is alſo as certain, no court of chivalry being at that time, nor for a long time before having, been held; ſo that the ſaid Sir William Dugdale having no other remedy, was neceſſitated at that time to fly to the common law, and commence his ſuit by an action upon the caſe; as many others heretofore in caſes tryable at common law, have been forced to do in the earl marſhal's court, when the common law courts have not been within reach, as may plainly be proved by the *Placita exercitus apud Berwyk*, 24 Edw. I. where the marſhal alone (which is alſo remarkable, there being no mention of the conſtable in the whole roll) tried all ſorts of cauſes tryable at the common law (as well as ſuch as related to himſelf) and that by juries, as is uſual at common law. Of the acts of which court I have ſome few copies atteſted by the ſub-chamberlains of the tally-court, in whoſe cuſtody theſe records ſtill remain, and where more may be had in caſe it be required.

I ſay Sir William Dugdale being then without relief (as the plaintiffs at Berwyk were) was forced to fly to the common law, and bring his action upon the caſe, which certainly he would not, nay could not have done, had there any court martial been then in being: an action upon the caſe (as the books define it) being a general action given for redreſs of wrongs done without force againſt any man, and by law not eſpecially provided for. But that this caſe of Sir William Dugdale was moſt ſpecially provided for by the law of arms, had there been a court of chivalry in being, is not only manifeſt by the ſtatute itſelf, which allows all matters and deeds of arms, and other uſages and cuſtoms to the ſame matters pertaining, to be tried by this court, but by many of the preceding caſes, allowed both by the lords of the privy council, and even by the judges of the common law themſelves, to be tryable there, as matters either directly belonging to the officers of arms, or ſome way incident to their offices.

Wherefore, had the court marſhal been then in being, Sir William Dugdale could not have tried his cauſe by bringing an action upon the caſe.

Not to mention, that had this caſe of Sir William Dugdale been never ſo nearly related to the common law, had there been a court of chivalry, and the cauſe been commenced in it (as the caſes were, againſt which the prohibitions are now ſent) it muſt however have been removed by a privy ſeal, and firſt paſt the deciſion of the lords of the council, as in the caſe above-mentioned of Pountney and Berney, before it could be removed to any common law court, and not by ſuch prohibitions as theſe, which do not only leſſen the juriſdiction of the earl marſhal, but of the king himſelf, of the lords of the council, and of the lord privy ſeal, who will all, it is to be hoped, be equally careful of preſerving the rights as by law eſtabliſhed as the earl marſhal himſelf.

And thus, Sir, according to your deſire, and the beſt of my ſkill, I have drawn you a ſhort ſcheme of the matter in hand, which is in all humility ſubmitted to your judicious management, wherein, though perhaps I have but expoſed my weakneſs, yet it may ſerve to ſhew my zeal for the earl marſhal's ſervice, and that I am willing to approve myſelf (though to the hazard of my reputation) that I really am,

SIR,

your moſt faithful, ready,

and moſt dutiful Servant,

ROBERT PLOT.

N° XXXVIII.

N° XXXVIII.

CAMERA STELLATA:

OR,

An Explanation of the moſt famous Court of STAR-CHAMBER: together with an Account of the Offences there puniſhable; the Fees payable, and the Orders for Proceedings therein.

By Mr. TATE.

AS in the government of all commonwealths, ſundry things do fall out both in peace and war, that do require an extraordinary help, and cannot abide the uſual cure of common rule and daily juſtice; the which is not performed but after one ſort, and that not without ſome delay of help, and expence of time: ſo albeit here within this our realm of England, the moſt part of cauſes in complaint are referred to the ordinary proceſs and ſolemn handling of the common law, and juſtice itſelf, yet there always have ariſen ſome few matters which have been reſerved to a higher hand, and have been left to the aid of abſolute government and authority.

Of this ſort it is, for example, that if any merchant, privy, or ſtranger be robbed of his goods at ſea, and the ſame do come to the hands of any perſon within this realm, the merchant may by the ſtatute 27th Edward III. chap. 13th ſue for the recovery of his goods, and ſhall be allowed to prove the ſame to be his own, either by his mark, charter-party, or cocket, or by the teſtimony of honeſt merchants, and thereupon ſuch goods ſhall be delivered to him again without other ſuit at the common law.

Neither is it hard to judge before whom this ſuit, whereof that ſtatute ſpeaketh, ought to be commenced, ſeeing that

that the prince of the land (who is the very ſpring and well-head of all juſtice) hath remaining within himſelf (as Mr. Bracton noteth) all manner of authority and juriſdiction which he hath not delivered over to others his ſubaltern juſtices.

And therefore king Richard the third (as we have it in the ſecond year of his reign) ſat in perſon with his councel in the Star-chamber, and there heard the cauſe of a Spaniſh merchant that ſued upon the ſame before-mentioned ſtatute, for his goods robbed at ſea. And the chief juſtice, 1 Henry VII. chap. 3. reports, that king Edward the fourth uſed the Star-chamber for conference with his nobility about the execution of ſundry ſtatutes; for the better obſerving of which, he there took the corporal oaths of them all; ſo that, as it ſeemeth, this place was the council chamber of the king when he and his court remained at Weſtminſter, whereof although but little be ſaid and regiſtered in books of law, becauſe lawyers were not then uſed in it, yet I doubt not but the records of the kings have plentiful mention of the acts in the ſame.

Now whether the place of court of Star-chamber be ſo called in reſpect it is ſtarry, that is, full of lights and windows; or for that the roof thereof was at the firſt garniſhed with images of golden ſtars; or by derivation from the old Engliſh word *Steorum*, which ſignifieth *to Steer*, or *Rule*, as doth the pilot in a ſhip; or whether it were ſo termed of the word *Stellio*, which betokeneth that ſtarry and ſubtle beaſt, of whom the fault of crafty coſenage is by the civilians called *Stellionatus*, which alſo is puniſhed in this court by an extraordinary pain, even as it is with them; the matter is not of ſuch importance, that it requireth any long diſcourſe or eager diſputation; yea the preſent labour ſhall be better employed, if leaping over the name, we enter into the court itſelf, and unfold the right uſe and end thereof, which ſhortly is this.

* To apply an honorable high and lawful remedy for ſuch enormities and exceſſes, as either be ſo exorbitant in

* The uſe of the court.

them-

themſelves, that they are not ſufficiently revenged by the uſual ſtroak of law; or be meet to be heard upon the ſtage as it were, that many may take a leſſon thereby; or elſe be committed by perſons of ſuch poor parentage, or wealthy in their own countries, that the ordinary courſe of law is hindered, and cannot there proceed to the due correction of them; in all which caſes right neceſſary it is, that the prince himſelf, or thoſe that be neareſt in the Star-chamber of authority under him, do ſhew themſelves: by the majeſty and awe of whoſe perſonal preſence, both ſuch offenders may be abaſhed and beaten down, and ſuch offences made exemplary and forewarning to others.

* But now becauſe I do not find that there was either ordinary ſeſſion in this court, or expreſs declaration of the pleas that were properly to be handled therein, before the time of king Henry the ſeventh, I will begin with the ſtatute thereof made in the third year of his reign, and firſt peruſe it, and the offences contained therein, and then afterwards touch ſome other particulars, whereof this court doth uſually take hold and underſtanding.

The beginning of the Authority of the Court.

The ordinary authority of the court of Star-chamber began by the ſtatute made in the third year of king Henry the ſeventh.

By that ſtatute it is enacted, as well for repreſſing of unlawful maintenance of giving of liveries, ſigns, and tokens of retainments by writing, or otherwiſe by imbraceries of the king's ſubjects; of untrue demeaning of ſheriffs in making pannels, and returning of writs, and of taking of money by juries; as alſo for the puniſhment of great riots, and of unlawful aſſemblies of people:

That the chancellor or treaſurer of England for the time being, and the keepers, and the keeper of the king's privy ſeal, or two of them, calling to them a biſhop, a

* No ordinary ſeſſion in that court, nor expreſs pleas.

temporal

temporal lord of the king's moſt honorable privy councel, and the two chief juſtices of the king's-bench and common pleas, or in their abſence, other two juſtices of the king's, ſhall have authority upon bill or information put to the chancellor for the king, or any other, to call before them, by writ of privy ſeal, any of the ſaid miſdoers, and by their diſcretions to examine them and others by whom the truth may be known, and ſuch as they ſhall find defective, to puniſh after their demerits, according to the form and effect of ſtatutes hereof to be made, in like manner and form as they ſhould or ought to be puniſhed, if they were thereof (by due order of law) convicted.

* And this ſtatute was accordingly put in execution until the parliament in the one-and-twentieth year of king Henry the eighth, by which time experience had eſpied ſome wants in this behalf. The which were then by the 20th chapter thereof ſupplied in this manner, viz.

That the chancellor, treaſurer of England, and preſident of the king's moſt honorable councel, attending upon his perſon, and the keeper of the king's privy ſeal, or two of them, calling unto them perſons named in the former ſtatute, upon any bill or information, be put in for any miſbehaving in the ſaid former ſtatute rehearſed. The ſaid chancellor, treaſurer, preſident, or keeper of the privy ſeal ſhall have authority to call before them by writ of privy ſeal ſuch miſdoers, and them, and others, by whom the truth may be known by their diſcretion, to examine, and the delinquents to puniſh after their demerits, after the form and effect of the ſaid former ſtatute, and of all other ſtatues thereof tofore made and not repealed, on ſuch manner as they ought to be puniſhed, if they were convicted thereof after the due order of the king's laws: and ſo by the latter ſtatute theſe things are wrought, viz.

Firſt, That the preſident of the king's councel is hereby added, and made one of the judges of this court.

* Stat. 21. Hen. VIII. chap. 20. a ſupplemental ſtatute of that of 3 Hen. VII.

Secondly,

Secondly, A doubt is taken away that might have ariſen upon the words of the firſt ſtatute; namely, whether the biſhops, the temporal lords of the king's councel, and the juſtices named in that ſtatute, were judges equal in authority with the chancellor, treaſurer, and keeper of the privy ſeal; or elſe, were but only aſſiſtants of their councel and advice; for here in this latter law, the full authority is given to the chancellor, treaſurer, preſident, and keeper of the privy ſeal; and the reſt are only to be called unto them, for their advice: but yet there is a neceſſity of calling them: for that the proceeding is erroneous, if either they do not call them; or hear not their advice, when they are called.

Thirdly, Whereas the former ſtatute willeth to have the ſaid offenders puniſhed after the form of the ſtatute hereof to be made; this other ſtatute referreth the puniſhment to the form of that, and of all ſtatutes before that time made, and being in force.

Laſtly, The bill or information may by this latter ſtatute be put in general, whereas by the words of the former law, it ought to have been put to the chancellor.

By theſe two ſtatutes then it is brought to paſs, that whereas before time, the handling of theſe offences did proceed by twelve men; that is, either by way of indictment, or by action conceived upon the ſtatutes that did prohibit thoſe offences: now the ſame may, without any inqueſt or verdict, be determined by examination; and that either of competent witneſſes, or of the parties themſelves; a thing that was never permitted by the common law of the realm, which alloweth no trial but *per legale judicium parium*, as Magna Charta plainly doth acknowledge it. And this was now at the laſt done, becauſe as theſe ſtatutes themſelves do report, that ordinary proceedings at the common law, againſt theſe maintainers, retainers, rioters, and the reſt, were hindered by the greatneſs of the offenders; the which were ſo breaſted, ſided, and backed with many friends, tenants, and followers in their own countries, that no indictment or trial could make way againſt them. An evil

tending to the utter ſubverſion of the good policy of the realm, if this ſovereign and higher hand had not been timely extended for help and remedy. But yet by the expreſs words of theſe laws, the offences therein named, are in none other degree to be puniſhed now in this court, than they were before by indictment, and the trial of twelve men. And therefore all the change that is in this matter, reſteth chiefly in circumſtances of place, the proceſs, the judges, and the means of the trial: the very ſubſtance, that is to ſay, the fault itſelf, and the pain due thereto, remaining the ſame that they were before. From which appointed pains, if theſe lords ſhall at any time vary by their diſcretion; that muſt be underſtood to be done by ſome former authority, which they had: as by the councel of the king, and not by virtue of theſe ſtatutes, which leave unto them no liberty at all in this behalf.

Thus much being ſaid, touching theſe things, let us now deſcend to the particular numeration and handling of thoſe offences, that are by theſe ſtatutes to be heard and determined by the lords there; and they are in number eight, viz.

Firſt, Unlawful maintenance.

Secondly, Giving of liveries, ſigns, or tokens.

Thirdly, Retainers by writing, or otherwiſe.

Fourthly, Inbraceries of the king's ſubjects.

Fifthly, Untrue demeaning of ſheriffs in making of pannels, or other untrue returns.

Sixthly, Taking of money by juries.

Seventhly, Great riots.

Laſtly, Unlawful aſſemblies.

All which are but either by fraud or force, to the hindrance of the execution of law, and to the increaſe, as one of theſe ſtatutes ſaith, of murders, robberies, perjuries, unſurety of mens lives, and loſs of their goods and lands, forgeries, and all other offences, which by corruption of time are ſprung up, and no law provided for their puniſhment, but by this court, who hath authority to puniſh beyond the ſtatutes, according to the nature of the offence.

Now

Now for the better manifeſtation of theſe matters, I will lift them up by one and one, in order as they lie; and firſt ſhew the nature of the fault; then the evils that do enſue thereof; and laſtly the puniſhment that by law is laid upon it.

What Maintenance is.

Maintenance ſeemeth to be derived of the Latin word *manu tenere*, becauſe he that maintaineth, taketh in hand, as it were, and holdeth the cauſe of another man, as faſt, as if it were his own proper cauſe. And therefore maintenance is a kind of conſpiracy made by two or more perſons againſt ſome other, becauſe the very party to the cauſe, and ſome other that ſteppeth into the furtherance of it, do combine themſelves together, and do make a complot againſt the adverſe party to the ſame. And this may be as well for matter changing the ſuit or plea, as for ſome other cauſe, not being brought into plea or action.

Howbeit *maintenance* is commonly underſtood of cauſes in ſuit: as when one that hath no intereſt to a matter in queſtion, will either give money to council, or will take ſome intereſt, of purpoſe to make the cauſe ſeem to be his own, or will ſhew himſelf, or give his ſpeech or countenance for the one ſide againſt the other, at ſuch time as the matter ſhall be heard or tried, or will terrify or diſcountenance the contrary ſide, or generally will do any thing for the one party to the hindrance of the free courſe of juſtice againſt the other.

Of this *maintenance* there is one ſort that beareth a ſpecial name called *champarty*, becauſe the party to a ſuit giveth to ſome other man for maintenance ſake, *campi partem*, that is, ſome part of the thing in demand, or otherwiſe ſome profits going out of the ſame.

Champartors, ſaith the ſtatute third of Edw. II. be they that move pleas and ſuits, or cauſe them to be moved by their own or other mens procurement, and ſue them at their proper coſts to have part of the land in variance, or part of the gains that may come by that ſuit.

The perils that enſue of Maintenance and Champertie, viz.

The perſons that fall into this fault of *maintenance* or *champertie* be either public, as officers, or elſe private men; and the evils that do enſue thereof be great in them both, but ſeemeth greater in public perſons, as they that have (which private men do want) the helps of their offices, and aid of their authority to work their harms withal.

For if it be permitted, that every one, and eſpecially ſuch as have the higher places, may ſtep into the quarrel of another, and maintain it as their own, both by their purſe and power, then ſhall the cauſe of the poor and honeſt be overthrown and trampled under foot, and then ſhall the wicked be emboldened to offer injury, and the way to redreſs it ſhall be ſhut up and faſt barred.

The laws of the realme have therefore, according to the diverſity of the offences therein, ordained ſundry and divers puniſhments

And firſt for maintenance thus:

None of the king's counſellors, ſervants of his houſehold, officers of his courts, or great men of the realm, ſhall take upon them to maintain any quarrels or parties in the country to the diſturbance of the commonwealth, upon pain of their offices, bodies, goods, and lands to be at the king's pleaſure. Stat. 1 Edw III. cap. 14. 4 Edw. III. cap. 2. 20 Edw. III. cap. 4. & 1 Rich. II. cap. 4.

No man ſhall by any means buy or ſell, or take promiſes or coventant to have any pretended right or title to any lands, tenements, or hereditaments, unleſs he that ſo ſelleth, promiſeth, or covenanteth, that he or his anceſtors, or they by whom he claimeth, have been in poſſeſſion thereof, or have taken the rents or profits thereof by the ſpace of one whole year next before ſuch ſale, covenant, or promiſe, upon pain that ſuch ſeller or promiſer ſhall loſe the whole value of the thing bought or promiſed; and that ſuch buyer or taker of promiſe, knowing thereof, ſhall likewiſe loſe the whole value thereof.

No man ſhall by any ſiniſter labour or means maintain any matter or cauſe to the diſturbance or hindrance of juſtice,

tice, upon pain to loſe ten pounds for every offence. Stat. 32 Hen. VIII. cap. 9.

No ſheriff or ſteward of any court ſhall ſuffer any barretor or maintainer of quarrels in their county-courts or otherwiſe, upon pain that the king ſhall grievouſly puniſh both the ſheriff and him that ſo doth. Stat. 3. Ed. I. cap. 32.

No perſon, after forcible entry by him made into any lands, or after holding the ſame with force, ſhall make any feoffment for diſcontinuance ſake, to any lord or other perſon to defraud the poſſeſſor of his recovery, and if it may be proved, then that feoffment or diſcontinuance ſhall be void. Stat. 8 Hen AI. cap. 9.

No perſon, ſhall maintain any riot, rout, or unlawful aſſembly, that the ſame thereby may not be found by the jury charged to enquire thereof, upon pain of impriſonment, and to forfeit twenty pounds. Stat. 19 Hen. VII. chap. 13. Riots.

Touching *champartie*, it was ordained, that ſuch as take pleas to *champartie* by any craft or means ſhall, if they be any of the king's counſellors, houſehold ſervants, juſtices of the courts, or miniſters there, have three years impriſonment, and make fine at the king's pleaſure. Stat. 21 Ed. I. And if there be any other perſon than ſuch, then they ſhall forfeit ſo much of their own lands and goods, as the things that they have ſo brought ſhall be worth. Stat. 28 Ed. I. Champertie

Giving of liveries, badges, and other ſigns or tokens, is the next fault in order to *maintenance*, and partaketh of the ſame matter, being alſo a kind of conſpiracy to maintain ſome party, and to make it great withal. For on the one ſide, when noble and mighty men and gentlemen do perceive that the trial of cauſes in the country proceedeth ordinarily by the mouths of Franklings and Yeomen Freeholders, and do find themſelves unable without ſuch, to recover their wrongs and oppreſſions, with the cloak of law, then do they many times retain ſuch men into their avowment, ſervices, and protection, offering unto them the countenance of their nobility, authority, wealth, and friends, that they may alſo receive reciprocal favour and good help by their ſolicitation Giving of Liveries.

ſolicitation and means among the freeholders of the country that be their neighbours, friends, and kinsfolk.

And on the other ſide, theſe good fellows ſeeing that the cloak and cloth of a nobleman, or other great perſonage, is a good defenſative againſt ſuch ſtones of law or other buſineſs, as do ariſe in the country; and that might many times, as the proverb is, doth overcome right; they willingly, and by great ſuit emband themſelves amongſt their other ſervants. And many of them, when they find themſelves inveſted, wax afterwards ſo bold as to offer ſuch wrong to their neighbours, as they were at the firſt glad to be ſhielded from. Beſides this there was wont to be another kind of league and alliance, not of many ſervants, but of equals amongſt themſelves; whereof no leſs miſchiefs have enſued than of the former; for the vulgar and baſe people, eſpying that the churchmen were rich, and ſtrong by their conjunctions; that the nobility, gentry, and beſt yeomandrie of the country were faſt linked together in bonds; and that in cities and corporate towns alſo there was an uſual combination of many into one body; ſo that all other ſorts of men, beſides themſelves, were ſtrongly united, and they only left to ſtand by themſelves; they fell therefore into ſhouling and banding companies, and each man at his own charges ſuited himſelf in like coats, hoods, hats, laces, or other marks, whereby they might be known each to other of them.

Now although ſuch connections may at the firſt ſhew deceive many with a vizard of amity, love, and brotherhood; yet the wiſdom of the law, which is able to unmaſk ſuch fraud, hath diſcovered many dangerous evils that lie and lurk underneath them.

For beſides that the common courſe of juſtice between man and man was greatly interruped by thoſe confederacies, ſo as hardly any man that was not party to ſuch a conjuration could either aſk his right againſt any of them, or repel the injury that they ſhould offer unto him (the cauſe of every one of them being uſed as the common cauſe and quarrel of them all) it was found perilous by many proofs, even

even to the ſtate and kingdom itſelf, that either noblemen or gentlemen ſhould draw ſo long tails after them, or that the meaner ſort of the people ſhould be ſuffered to make ſo ſtrong bodies and bonds among themſelves; both which are of the ſeed and weed of mutiny, tumult, and rebellion. The laws have armed their power againſt them; providing at the firſt, that no yeoman, or other perſon under the degree of an Eſquire, ſhall take any livery of any lord, except he be his houſehold ſervant or continual officer, upon pain of fine and impriſonment. Stat. 16 Rich. II. cap. 4. & 20 Rich. II. cap. 2.

Then afterwards it was ordained upon like pain, that no lord ſpiritual or temporal ſhould give livery to any knight or eſquire other than to his houſehold ſervants, officers, and council learned in the law. Stat. 1 H. IV. cap. 7. which law ſtepped ſo far into this matter, that it forbad knights and eſquires to wear the king's own livery during the time that they had their abode in their countries.

King Henry the fourth ſeeing this evil to increaſe, did alſo increaſe the pain, and laid five pounds upon the giver of any livery, if he were a knight or under that eſtate, and forty ſhillings upon the taker. Stat. 7 H. IV. cap. 14.

At the length the penalty of five pounds for every month was inflicted upon the giver, and the like upon the taker, except he were his houſhold man, officers, or council at the law. Stat. 8 Ed. IV. cap. 2.

And becauſe it was at the length perceived that the officers of the king's own caſtles, manors, foreſts, chaces, and parks were retained unlawfully by other men, and did alſo retain into their own ſervices unlawfully the king's farmers and tenants, thoſe offences were alſo drawn into judgment, and puniſhed by the loſs of their offices and leaſes. Stat. 3 H. VII. cap. 12.

Thus far of liveries, ſigns, or badges given by the ſuperior to his inferior.

As touching the other confederacy of common people, the ſame was alſo prohibited under the pain of forty ſhillings laid

laid upon every one of them that ſhould congregate himſelf by the uſe of any common livery, thoſe fraternities and myſteries that were ordained to a good intent of cities and boroughs only excepted. Stat. 7 H. IV. cap. 24.

Retainment without any liveries.

And now it might ſeem that ſufficient law had been provided againſt all kinds of retainments. But yet it was found true, that one ſaid, *he that will deviſe law againſt offences, hath the head of Hydra to fight with all*; ſeeing that one evil is no ſooner cut off, but another ſtarteth up and taketh the place.

And even ſo it fell out with this matter of retainments. For when the law had laid ſharp correction upon the giving of liveries, ſigns, badges, or other notorious tokens of unlawful complots, then it was deviſed that men ſhould ſecretly bind themſelves together for maintenance of quarrels by oaths, promiſes, or writings; whereof there grew a great deal more hurt than of all other retainments beſides; for that in thoſe other retainments men ſerved at liberty, and might change when they would. But by theſe means they were ſo faſt tied, that without breach of oath or promiſe (things whereof all men make ſome conſcience) they would not be ſet free and delivered. And therefore ſuch retainers, and he that is retained, are to loſe a hundred ſhillings a piece for every month that ſuch their retainments ſhould continue, by ſtatute 8 Ed. IV. cap. 4. Theſe be the pains that law hath provided; and theſe be the evils that former times have eſpied concerning the matter of retainments.

But yet there is in time a further miſchief begotten; the which, if thoſe laws had foreſeen, they would have whetted a ſharp edge againſt it. For ſeeing that in former ages the payment of ſubſidies, the ſervice of maſters, and other common charges of this our time were not uſual, the harm of retainments was not then ſo thoroughly ſeen and diſcovered as now it is. There is nothing more uſual at this day than to retain the wealthieſt yeomanry and others, by forbearing them wholly, or charging them lightly to make recompence of their ſervice, by robbing of the king's coffers,

coffers, or defrauding him and the realm of that help which they might bring, if they were equally burdened as their neighbours are, and not favoured by them that manage thoſe ſervices, in reſpect that they belong unto them. Which things conſidered, it is to be wiſhed that either ſharp laws were provided, or at the leaſt that former laws were more ſeverely executed againſt unlawful retainments. But now to the reſt.

Imbracerie.

That imbracerie of the king's ſubjects, which is mentioned in theſe ſtatutes, may be of two ſorts. For either it may be taken for the drawing of men into bonds and counterpains for maintenance, or elſe it may ſignify the ſeducing of jurors to pervert juſtice; the which is more properly called, and more commonly known by the name of imbracerie; and yet it is a ſort of maintenance and conſpiracy alſo. For in this reſpect the ſtatute of 28 Ed. I. called this ſort of men falſe informers and imbracerers of aſſizes and juries; and the ſtatute 38 Ed. III. cap. 13. defineth them to be imbracerers, which do ſolicit and procure inqueſts in the country, to make gain and profit thereby. It took the name, and may well be derived either of the French word *embracer*, which is to kindle or ſet on fire, or elſe from the word *embraſter* in the ſaid language; which our tongue hath adopted and uſeth in the ſame ſenſe; that is, where one man taketh another in his arms, and (as we uſually ſpeak) embraceth him; for by a metaphor of the firſt meaning, he that laboureth a jury for the one ſide or party, may well be termed an imbracerer, becauſe he cannot do it without kindling or incenſing the minds of ſuch party againſt the other party; ſo by a metaphor of the ſecond meaning, he may be ſaid to be an imbracerer of a jury, that maketh much of them and embraceth them in the arms of fair ſpeeches, gifts, or promiſes to them, to aſſure and win them to the one ſide againſt the other. So that if a man will take upon him to labour and ply a jury for the one ſide, before they come to the bar; or by any means endea-

vour to corrupt them for the help of the one party againſt the other, he is a ſpecial maintainer under the name of imbracerie.

The Harm of Imbracerie.

What evils do follow of this fault may be ſeen by this; that it is a ſort of maintenance, and therefore ſendeth abroad the like effect in generality that other maintenance hath; but eſpecially it is occupied in corrupting of jurors, which are in effect the very judges of our law, ſeeing that the judge can give none other ſentence than according to the verdict which the jury preſe nts unto them.

Now what harm may enſue by poiſoning the pnion of jurors in this realm (whereas the chief proceeding in law is by the means of them) every man may ſee; and to ſay the truth, no leſs miſchief doth accompany it, than the ſecret undermining, ruin, and overthrow of all law, right, and juſtice. Worthily therefore hath the law, 38 Ed. III. cap. 13. ordained, that if any perſon ſhall for his own gain imbrace any jury or inqueſt, he ſhall loſe ten times ſo much as he received; and if he have not wherewith to anſwer ſo much, that then he ſhall endure a whole year's impriſonment. But if he ſhall embrace a jury without taking any thing for his labour; yet by the ſtatute 32 Hen. VIII. cap 9. he ſhall pay ten pounds for every ſuch offence.

Miſdemeanours of the Sheriff.

And now as thoſe that ſerve to do wrong, can little prevail by running the courſe of law, though they be never ſo well furniſhed with retainers and followers, and enqueſts alſo; unleſs, withal, by the help of the ſheriff and his clerk, ſuch men be returned and put into the pannel, as the parties themſelves ſhould nominate and like; even ſo this ſtatute, ſeeing that cauſes in law depend no leſs upon the uprightneſs of the ſheriffs ſervice, then doth the door upon the hooks by the means of which it openeth and cloſeth at pleaſure, they have in the firſt place noted two ſeveral miſdemeanours

hours of that officer, and have referred the correction of the ſame to this honourable aſſembly in the Star-chamber.

The one is the untrue demeaning of the ſheriff in making pannels, and the other is his falſehood in other returns.

By the pannel is meant the catalogue or roll wherein the names of four-and-twenty good and lawful men ought to be returned by the ſheriff, out of whom the number of twelve men are to be tried and ſworn, and to yield their verdict upon each matter in iſſue that is triable by jury, between man and man; and the ſame, or a greater number of them, are to be charged for enquiry on the behalf of the king.

The Evils of this Miſdemeanour.

In which part, if the ſheriff ſhall apply himſelf not to ſerve the court and juſtice, whoſe miniſter he is, but the one or the other party who ſhall corruptly win him; then ſhall not the better cauſe, but the fuller purſe prevail; and it ſhall be all one, whether the party be judge of his own matter, or procure ſuch jurors as himſelf ſhall nominate, to paſs upon the matter in trial for him.

And as in this part of his office the good demeanor of the ſheriff maketh much to the furtherance of right; and his corrupt dealing may highly advance injury and wrong; ſo alſo by all other returns, and anſwers of his ſervice to his majeſty's courts, he may greatly help or hinder the matter in queſtion; either in winning time againſt the plaintiff by dilatory returns of his writs and proceſs, or wronging the defendant by untrue anſwers made of that which he hath in charge, or abuſing both them and the court by ſending in no return at all.

The Pain of ſuch Miſdemeanours.

In all or the moſt of which caſes, although the party defrauded by him may ſometimes help himſelf by averment againſt his return; ſometimes by complaint to the court where the ſuit dependeth; and at other times may find amends by an action upon the caſe of his abuſe; yet

the law, ſeeing that juſtice is many times both delayed and deluded by ſuch unlawful ſervices, hath firſt touching pannels generally provided by the ſtatute 42 Ed. III. cap. 28. and 34 Ed. V. cap. 4. & 2. for the better direction of the ſheriff in that behalf, viz. upon pain to be fined after the quality of the treſpaſs againſt the king, and to loſe the quantity of the damage ſuſtained by the party.

In all manner of pannels, thoſe perſons ſhould be put that be moſt ſubſtantial, worthy of faith, and not ſuſpected nor procured; but having beſt knowledge of the truth, and being moſt nigh to the place where the queſtion in law doth ariſe. By the ſtatute 18 H. VI. cap. 14. it was ordained to continue for a time, that if the ſheriff or bailiff ſhould take any thing for arraying of a pannel, the party grieved ſhould have his action and recover ten times ſo much againſt him.

That this abuſe might be the more ſurely depreſſed, eſpecially in caſes where the ſervice concerneth the prince himſelf, order was taken by the ſtatute 3 H. VIII. cap. 12. that the juſtices of the gaol delivery, and of the peace, might reform all pannels returned before them to ſerve the king; and that the ſheriff and his miniſters ſhall, under the pain of twenty pounds, eftſoons return the ſame ſo returned by them.

Many other rules there are particularly ſet down by ſtatutes concerning the value of the jurors, in lands and goods returned in ſundry ſorts of actions concerning hundreds, to be inſerted in the pannel among them; touching the quantity of the iſſues that the ſheriff ought to return upon every of their heads; and ſuch other matters, whereof many do carry their ſpecial pains with them: all which are overlong to be recited here, and be ſufficient of themſelves to make the body of a large diſcourſe. Therefore to come to the other part, where either the ſheriff will not receive the writ at all, or receiving it, will make no return of the ſame. There is a large ſtatute made 13 Ed. I. cap. 39. by which ſtatute it is enacted, that the party may himſelf deliver the writ openly unto the ſheriff, or may deliver it to him by

by other witneſſes, and that if he do not then return the ſame, the party ſhall have damages againſt him according to the peril that might come unto him by that delay.

The like remedy is there given if the ſheriff will untruly return, that the writ came ſo late unto his hands that he could not for want of time make execution of it.

There is help alſo for the untrue return of ſmall iſſues upon a man whoſe land is able to anſwer great ones; and for the unjuſt charging of the bailiffs of liberties to have made him no anſwer of the writs that he ſent unto them; in all which caſes of falſe return, power is given to the ordinarier juſtices to puniſh the ſheriff once or twice for his offences, but if he fail the third time, that then no man ſhall have to do therewith but the king. Even by the ſame ſtatute no judge or officer may take upon him to puniſh a great man that ſhall reſiſt the ſheriff in the execution of the king's writs, except the king himſelf, to whom that power is reſerved; becauſe, as the ſtatute ſpeaketh, ſuch perſons be diſturbers of the king's peace, and of his realm.

But foraſmuch as the under-ſheriffs clerks waxed bold to commit the ſame offences, for which their maſters were to be puniſhed, and for which there was not yet any ſword of law drawn againſt them; there was in the time of the ſame king an ordinance made, and called *tractatus contra vicecomitem et clericos*, by which it was provided, that if the offence of a falſe return be found in the perſon of ſuch a clerk to the ſheriff, that then ſuch clerk ſhall make both fine to the king and ſatisfy the parties hurt, if he be able, and the ſheriff to go quit. But if the clerk be inſufficient, then is the ſheriff himſelf to anſwer for him.

It would prove tedious to preſent the variety of all thoſe pains and forfeitures that law, in force, hath deviſed againſt the untrue returns of the ſheriff.

Neither is it ſo fit for the purpoſe that I am now in hand with; ſeeing that in the moſt of them, the ordinary remedy given by thoſe ſtatutes is ſufficient revenge: and therefore having already proved that part which beſt ſerveth for giving juriſdiction to this court, I will go forwards to the handling of the reſt.

Taking

Taking of Money by Juries and the Evils thereof enſuing.

It is juſtly to be ſuſpected, that if the jury take money to give their verdict, they will with Judas betray the truth: and if it be moſt true, that gifts and bribes will pervert the judgment even of the wiſeſt, then how can it be otherwiſe, but that the common man ſhall be drawn aſide and corrupted thereby? the which fault is much greater than either conſpiracy or maintenance. However, if either of the parties that be but private men, procure falſe or undue dealing in the ſheriff and his clerk, who are publick officers, yet, howſoever they ſhould collude among themſelves, and cloſe together, an upright and faithful jury, that without reſpect of reward would attend to the truth of their evidence, might overthrow the frame of whatſoever miſchief the party, ſheriff, and his clerk ſhould intend and imagine between themſelves. And therefore when the jurors alſo ſhall pledge the one of the parties in that cup of poiſon which he hath brewed to deſtroy the life of his adverſary's right, what can be looked for, but that the better ſide ſhall have the worſe and take the fall? And this being ſeen into by the law, it was ordained by the ſtatute 38 Edw. III. cap. 13. that if a juror in any inqueſt to be taken for the king, or between parties, do take any thing by himſelf, or by any other, of the party plaintiff, or defendant, to ſtay the verdict, then ſhall he pay *decies tantum*, ten times ſo much as he hath taken; whereof the one half to be to the king, whoſe judgment and juſtice he hath perverted, and the other half to the party, or any other that will ſue the ſame: and if he have not ſufficient wherewith to ſatisfy this law, then to have the impriſonment of a whole year. In which ſtatute one thing is eſpecially to be obſerved; that to take any thing whatſoever in ſtaying of the verdict, is an offence againſt it; although the ſtatute 3 H. VII. which ſubmitteth this fault to the puniſhment of the Star chamber, hath no mention but of the taking of money; which words, if they be not conſtrued by an equity, the whole law may be deluded by it.

Great

Great Riots and unlawful Aſſemblies.

After this, and the reſt of the offences that are carried in the lap of fraud, coven, and deceit, great riots and unlawful aſſemblies, which will make their way by force, come next to my hand.

The which two offences, though they be diſtinct faults both in the property of their own nature, and in the order of theſe ſtatutes, yet, becauſe for the moſt part the one is but the effect and ſequel of the other, I will wind them up both on one bottom together. Not without cauſe, but for diſtinction ſake, doth the ſtatute 3 H. VII. call ſome riots *great*; for ſundry former laws do note two manner of riots, the one leſs in reſpect of the ſmaller number of perſons that commit it; as in regard of the ſmall terror, diſturbance, or hurt that enſueth of it; the other great or heinous, becauſe it ſavoureth of a more general diſobedience, even to the ſhaking of the ſtate; and is, or may be in regard of the number or quarrel, a very ſeed of mutiny and rebellion; and therefore the ſtatutes 5 R. II. cap. 6. and 7 R. II. cap. 2. & 6. do term the riots of this latter ſort by the names of *rumours*, *great ridings*, *routs*, and *riots againſt the peace*. The ſtatute 2 H. V. cap. 9. calleth them *aſſemblies of people in great number in manner of inſurrection*; and the laws 5 R. II. cap. 2. and 1 Mary cap. 12. do name them rebellious inſurrections and rebellious aſſemblies.

What is an unlawful aſſembly, rout, and riot.

The offences of all theſe ſorts are now at this day diſtinguiſhed by their received names; that is, *unlawful aſſemblies*, *routs*, *and riots*. An *unlawful aſſembly* is commonly taken to be a company of three perſons or more gathered together to the end to commit forcible and unlawful acts; a *rout* is likewiſe conſtrued to be, where ſuch a company of three or more being gathered to ſuch an end, who do move forwards by going or riding, put their intention partly in practice, but yet do not come to the very actual handling and execution of their purpoſe. A *riot* is the very effect and final act of ſuch a company of

three or more aſſembling, proceeding, and putting in execution forcibly that unlawful work which they intended. As for example, if three perſons or more under the number of twelve, do aſſemble themſelves unlawfully to beat any perſon; or to enter forcibly into the houſe or land of another; or to pull down the incloſures of any park, warren, or ground incloſed; or to deſtroy any fiſh pond, pool, or dove-houſe; or to do ſuch other act, and being ſo aſſembled, do go forward about the ſame, and do effect their deſire, then is this an *unlawful aſſembly* for their firſt meeting, *a rout* for their moving forwards, and *a riot* in the end by their execution.

From whence a Rout and Riot are derived.

This word *rout* came from the Saxons, who to this day call *rowte*, a band or company of men riding together. *Riot* we borrowed of the French *rioter*, which ſignifieth to brawl or ſcold; becauſe moſt commonly outragious deeds do follow contention and ſcolding words.

The evils that will enſue, if fellow ſubjects may be ſuffered to run when they liſt on heaps; and to put and puſh each at other as the wild and ſavage beaſts of the field and foreſts are wont to do, are ſo great and apparent, that they bewray themſelves, and need no words to blaze them. The pains, therefore, that the law hath inflicted upon ſuch aſſemblies, routs, and riots, be theſe, viz.

The parties offending ſhall be taken by the juſtices of the peace and ſheriffs, and be thrown into the next gaol till they have made fine and ranſom to the king. 15 Rich. II. cap. 2. Rioters attainted of great and heinous riots ſhall be impriſoned one whole year at the leaſt without bail or mainprize, and then make grievous fines. And ſuch as ſhall be attainted of petit riots ſhall have impriſonment, and make fines as ſhall ſeem good to the king's juſtices. Stat. 2 H. V. cap. 81.

But if the number of ſuch an aſſembly be twelve or more that ſhall attempt any of the things prohibited by the ſtatute made againſt unlawful and rebellious aſſemblies in the firſt year

year of the late queen Elizabeth her reign, and do continue together by the ſpace of one hour after proclamation made for them to depart; then is the offence felony, and may receive puniſhment in another degree, and in another court, by the ordinary courſe of lawful trial.

Now have I run over the firſt part of my purpoſe, and have not only dealt with the ſtatute that gave the firſt ordinary ſeſſion and authority to this court, but have alſo diſcovered thoſe eight ſeveral offences that are contained therein, the which I have not ſo largely diſcourſed of as the argument itſelf would bear, eſpecially for that part which deſcribeth the pains; partly, becauſe I meant only to make a ſummary ſhew of the whole matter; and partly, for that the judges of this court are not tried (as I ſaid before) to the preſcript pains of thoſe laws; but as the cauſe ſhall offer to their honourable diſcretions, may alter or increaſe any of the ſame.

Of thoſe other Faults whereof this Court hath Juriſdiction.

It remaineth that I give ſome taſte of thoſe other faults alſo, for which this noble and grave court doth uſually deliver help and correction; wherein I am compelled to be the ſhorter, ſeeing that I have neither any written leave whereby to lay them open, nor any acceſs to the memorials of this court itſelf, which is the only regiſter of thoſe things that fall out in experience within the ſame. Beſides the which, they be variable and infinite in theſe particular ſorts, according to the variable and bottomleſs draughts and devices of wicked men, out of whoſe ſhop they be ſent; which conſideration conſtrained the the poet to ſing,

Non mihi ſi linguæ centum oraque ſint, centum
Ferrea—omnes ſcelerum comprendere formas
Omnia pœna, &c.

Howbeit they may be all contained in ſome of theſe general bonds that do enſue. For as all the cauſes of this court be in their own nature criminal and not civil, ſo alſo theſe criminals do proceed (as I have before noted) in theſe few, whereof theſe ſtatutes do treat, viz.

Either from fraud or force, or from them both together; and likewiſe they all be committed, either by publick perſons or by private men, and ſometimes againſt the one, and ſometimes againſt the other.

Offences in Officers and private Men, and the Authority to puniſh as cauſe requireth.

The miſdemeanors of publick men and officers, that are forged out of fraud, be the corruptions of the judges of any court, of the juſtices of the peace, and of all other judicial commiſſioners or delegates, who, for covetouſneſs in themſelves, or for friendſhip or hatred towards any of the parties, will put their own fingers into the cauſes that do hang before them, and will be ſeen more like to affectionate councellors or parties, then to upright and indifferent judges.

The private and meaner ſort of men wanting the furniture of authority, and ſundry other helps wherewith thoſe great ones are apparelled, do beat their brains for the finding out of ſubtilties and ſhifts, and do for the moſt part make traps, and lay hooks for the ſnaring and intangling of ſilly and ſimple men; and hereof ſpring thoſe mean cozenages, crafty reaches, underminings, devices, ſubtill complots, counterfeit drifts, and fraudulent fetches, the eggs whereof they be; theſe are cheriſhed ſometimes by the deſire of money, and ſometimes by thirſt of revenge, but always, or for the moſt part are hatched by perjury, bribery, and corruption, and are wholly addreſſed to the diſcredit of the good name of ſome, to the loſs and hindrance of others in their goods or fortunes, and to the great danger and hazard of the life of many a man.

Now to ſay the truth, it is very meet and juſt, that if the wicked ſort of men ſhall excogitate any thing with great labour of wit and cunning, ſo as it may ſeem they have drawn a quinteſſence of a miſchief, and ſet abroach a moſt rare and ſingular device to the hurt of the good and quiet ſubject, it is meet and juſt (I ſay) that lawful authority itſelf, which is ordained for the defence of the

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one, and puniſhment of the other, ſhould ſtrain the line of juſtice beyond the ordinary length, and take exquiſite revengement upon them for the ſame.

Wherefore this high court, as it excelleth all other ordinary courts of juſtice in this, that beſides ſundry noblemen endued with great wiſdom, and learning of many ſorts, it hath alſo the moſt grave and learned judges of the other courts for their aſſiſtance; ſo is it of all others the fitteſt to apply new remedies for new diſeaſes, and to whet and exerciſe the edge of honour, authorities, excellent wiſdoms, and gifts of the higheſt learning, upon ſuch deviliſh impoſtors, miſchievous ſycophants, and dangerous deceivers.

The Defence of publick Perſons.

And no leſs reaſon is it alſo, but ſuch good and upright judges, juſtices, commiſſioners, officers, and whatſoever other publick perſons, as without ſeeking bye-paths and ſtarling-holes, do walk *Regia Via* in their ſeveral callings, and yet nevertheleſs are aſſailed by the tongues, oppugned by the forces, or diſcomforted by the countenances of other men, ſhould fly and reſort for refuge to this high court, as to a certain ſanctuary and holy anchor, and ſhould there ſeek the defence of their authority, at the hands of them by whoſe means and commendation they firſt received it.

The further Authority of the Star-chamber in things not mentioned in the firſt Statute.

I might afford out of mine own time and memory ſome particularity of example for the moſt part of thoſe ſorts of offences drawn into this court by complainants, and ſentenced by authority there; but becauſe it is odious to commit names to writing, and I have no ſufficient note or warrant out of the regiſter of the court, wherewith to ſhield myſelf, I chooſe rather to forbear, and will now conclude my diſcourſe with a few words concerning the authority that this court hath over theſe, and the like offenders,

that are not particularly named in either of theſe two ſtatutes wherewith I firſt began.

Albeit, the great charter of the liberties of England, the very letters of manumiſſion, as it were, of the people of this realm out of that ſervitude, wherein the Normans had kept them many years after their conqueſt, doth in the perſon of the king, amongſt many other freedoms, grant this, viz.

Nullus liber homo capiatur vel impriſonetur, aut diſſeiſiatur de aliquo libero tenemento ſuo vel libertatibus vel liberis conſuetudinibus, aut utlagetur aut exulet, aut aliquo alio modo deſtruatur, nec ſuper eum ibimus nec ſuper eum mittimus, niſi per legale judicium parium ſuorum, vel per legem terræ, &c.

Hereby the common ſubject thought himſelf freed from that abſolute authority which the former kings and their councel of ſtate had exerciſed upon him, and that he ought not from thenceforth to be drawn to anſwer in any cauſe, except it were by way of indictment, or preſentment of good and lawful men, being his peers, or by proceſs made upon writ original, after the way of law. Yet nevertheleſs, ſome caſes daily creeping out by reaſon of controverſies, for which no law had been provided; for what wiſdom of man is there that can foreſee what ſhall be meet in each particular? and ſome miſdemeanors happening alſo from time to time in the diſtribution of thoſe laws that were already made, it came to paſs that many were enforced to ſue to the king's perſon itſelf for remedy, who, as he is the chief juſtice and vicar of God within this realm, ſo alſo doth he ſtand bound to deliver judgment and juſtice, when it ſhall be required at his hands. And this could he not evenly and uprightly do without calling the other party, neither had he many times (eſpecially in a new and ſudden occurrent) any ordinary writ or proceſs whereby to call him. Of neceſſity therefore the prince was to reſort to his abſolute power again, and by his purſuevant or letters, to ſend for the adverſe party, and to proceed to the hearing and determination of the cauſe, as to his kingly and judicial office appertained; the which that he might the better do,

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it was ordained by ſtatute, 28 Edw. I. cap. 5. that the chancellor, and the juſtices of the king's-bench, ſhould follow the king whereſoever he went, to the end that he might have always ſome near unto him, that were learned in the laws, and able to order ſuch matters as ſhould be brought before him.

Howbeit it was not a long time before the ſubject, which ſo haſtily fled to the king and his councel for ſuccour, was glad with all his heart to retire, and make recourſe to the ordinary ſeat and judge again. The which thing, whether it happened by the chargeable and hard acceſs to the perſon of the prince, that could not but be many ways buſied with greater matters; or by the long delay of juſtice, that muſt needs fall during his abſence out of the realm upon the occaſion of his foreign wars, and other affairs; or by ſome uneven dealings of his councel for want of ſufficient knowledge in the laws, whilſt happily they would undertake the hearing of matters without the advice of the chancellor and juſtices; or whether it chanced by all theſe, or ſome other means; it needeth not long, or curious matter of record, or writ original according to the antient laws of the land. And to the end that ſuch as uſed to prefer unto the king any accuſations, ſuggeſtions, or petitions againſt other men, might be utterly diſcouraged and beaten from the ſame, a law was given by parliament anno 7 Edw. III. cap. 3. &. 8. that they ſhould be ſent to the king's chancellor, treaſurer, and his great councel, and there ſhould put in ſureties of taliation; that is, to incur the ſame pain that the other ſhould have had, if the ſuggeſtions were proved untrue.

But that point was mollified the next year after, and order taken, that they ſhould be impriſoned until they had made full agreement with the party moleſted, and fine and ranſom to the king.

Finally, by the ſtatute 17 Rich. II. cap. 6. it was referred to the chancellor alone to award damages by his diſcretion, againſt any perſon, that ſhould make an untrue ſuggeſtion againſt another before the king's councel.

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This authority he exerciſed many years together, until at length his writs of ſubpœna flew ſo thick abroad, for matters determinable at common law, that he was charged to exceed the bounds of the authority committed unto him.

So that the parliament anno 15 Hen. VI. cap. 4. forbad that any ſubpœna ſhould be granted, until ſureties were found to pay unto the party grieved, both his damages and expences, if the matter could not be made good which was contained in the bill againſt him. And thus it may at once appear, both how hard a thing it is for great men, arrayed with high authority, to maintain themſelves within the preſcribed limits and pale of power; and alſo how impatient the common man of this realm hath always been to have his cauſes determined either at the councel board without open hearing, or by abſolute juriſdiction, without ordinary rule of proceeding.

In either of which caſes, he is very jealous of evil weight, and hard meaſure in the former; becauſe he is perſuaded that as his controverſy is not at the firſt taken from the ordinary trial, and drawn to the councel board without the ſpecial labour of his adverſary, and for great favour ſhewed unto him; ſo he feareth, that the ſame good will being once planted, will continually poſſeſs the place, and prove prejudicial for him, even to the end of his ſuit and buſineſs; the rather, becauſe he is not openly heard and ſentenced; a thing, that above all others, bridleth thoſe affections that commonly break forth in ſecret.

In the latter, becauſe, when he is to be judged by an irregular and abſolute authority, he findeth himſelf utterly deſtitute of all council and advice, which way to turn him, ſince no man can aſſure him beforehand, what will be the conſciences and diſcretions of his judges, where the iſſue may be foretold in the ſaid controverſies that come to determination by ruled law and bounden juriſdiction; and therefore the high and ſacred wiſdom of the parliament thinking it meet, that equal law ſhould be delivered, hath left to the council-board the managing of thoſe matters that are of ſtate, and hath committed the deciſion of private

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controverſies and diſtribution of common juſtice, to ſundry courts of ordinary reſort, and regular authority; but yet with this caution, that even as in the neceſſity of civil caſes and calamities of that kind, recourſe may be had to the chancellor for aid againſt the rigor of the common law. So likewiſe in criminal matters, where the evil is either new in device (for which no law hath hitherto been provided) or doth ſurmount the common growth, ſo as ſtanding law hath not reach or condign puniſhment for it there; help and ſupply is to be ſought in this court of the Star-chamber, before their honours who are put in truſt with it.

And now, although theſe acts of parliament before recited do ſpecially and namely deliver power over theſe right offences, and none other; yet doth this court, lawfully as it ſeemeth, take knowledge of all other crimes that be of the ſame kind, and like dangerous example; partly by virtue of the chancellor, treaſurer, and chief juſtice of the realm, who are the greateſt officers of juſtice that we have, and to the wiſdoms and diſcretions of whom ſometimes together, and ſome times a-part, ſundry laws have been ſubmitted for the correction of many offences; partly by the uſage of this court itſelf, which, ſince the making of the ſaid recited ſtatutes, hath commonly received ſuch complaints and partly alſo; by the equity of the ſole, and ſecret meaning of the ſame ſtatutes; which being moſt wholeſome laws, and made for ſuppreſſing of ſuperlative miſchiefs, and ſuch as do overtop the reſt, cannot but be thought under the names of theſe few, to comprehend all others that do offer the like hurt, or do threaten equal danger with them.

For proof of the firſt part, I have already noted ſome ſtatutes, and the volumes of the acts of parliament will afford a great many more, which I will not ſtand to recite. And for confirmation of the ſecond and third points, not I, but the ſtatute made in the fifth year of the late queen Elizabeth againſt perjury, ſhall ſpeak on this behalf.

For

For after that it hath committed the correction of perjury to the conſideration of thoſe in the ſeveral courts in which it ſhall happen to be made, and to the juſtice of aſſize of goal delivery, and of the peace, it hath theſe words following, viz. "Provided always, that this act ſhall not "extend to reſtrain the power given by acts of parliament "made in the time of king Henry the ſeventh, to the lord "chancellor of England, and other the king's councel, to "examine and puniſh riots, routs, heinous perjuries and "offences, and miſdemeanors, which the lord chancellor, "and they ſince the making of that act, have moſt com-"monly uſed, to hear and determine ſuch matters in the "court at Weſtminſter, commonly called the Star-cham-"ber; but that they ſhall and may proceed in the puniſh-"ment of all offences heretofore puniſhable, in ſuch wiſe "as they might have done and uſed to do before the mak-"ing of this act." Out of which words, theſe three things are plainly (as it ſeemeth) to be collected, viz.

Firſt, That this court of Star-chamber took her firſt ordinary power by that act of king Henry the ſeventh from which I have before deduced it.

Secondly, That routs and heinous perjuries are by this ſtatute of the ſaid late queen conſtrued to be within the meaning of that act of king Henry the ſeventh; and yet that act hath never a word of routs nor of heinous perjuries, otherwiſe than by implications, that jurors are perjured when they take money to ſay their verdict.

Thirdly, That this court hath uſed to hear and determine ſuch matters, are as I think not only theſe very offences which be particularly and literally named in that firſt ſtatute; but alſo ſuch other matters and offences as do tend to the like end and evil with them.

And allbeit, I know that judge Dyer in his collection, reporteth a ſtrange opinion, that this caſe of perjury is not ſubject to the examination and order of this Star-chamber court; yet foraſmuch as it appeareth by the ſelf-ſame report, that the lords of this court adviſed thereof, and yielded not

unto

unto it; I alſo can be contented to expect ſome further reſolution before I change my former aſſertion.

This is all, which for this time and ſervice, I purpoſed to ſay of this moſt honorable court, the beams of whoſe bright juſtice do blaze and ſpread themſelves as far as the realm is long and wide, and by the influence of whoſe authority all other the courts of law and juſtice are both the more evenly managed, and the more ſurely ſtayed up and maintained.

And now I will ſet down the fees due to the officers of that court, viz.

The clerk of the court being intituled chief clerk of the council of ſtate.

Imprimis, from his majeſty by letters patents yearly	xxvj l. xiij s. iiij d.
Item, two livery gowns, one of Damaſk, and the other of wrought velvet	
Item, for a warrant upon every bill	ij s.
Item, for every affidavit for ſerving of proceſs	ij s. iv d.
Item, for every affidavit for impotency or excuſe of appearance	ij s. iv d.
Item, for the copy of every affidavit	ij s.
For the Warrant for every of theſe: Subp. ad faciend. melior reſponſ. bill; Ad faciend. melior reſponſ. interr.; Ad rejunguend.; Ad injunguend. in com.; Ad audiend. judicium; Ad ſolvend. expenſ.; Als. attach.; Als. attach. cum proclamat.; Renewed com. rebell.; Renewed com. ad examinand. teſtes; Renewed dedimus poteſtatem	ij s.
The warrant for every attachment *per* affidavit	ij s. iv d.

For the Warrant for every of theſe.	Attachment granted in open court Attachment for want of anſwer Attachment for want of examination Attachment with proclamation Commiſſion of rebellion Superſedeas Habeas corpus Ne exeat regno Certiorari Writ of privileges Duces tecum Injunction	iij s. iv d.
For the Warrant for every of theſe.	Com. ad examinand. teſt. ded. pot. Ad inquirend. de damagiis	iij s. x d.
	For every name in a dedimus poteſtatem	ij s.
	For the appearance of every defendant	ij s.
	For the examination of every defendant	iv s. viij d.
	For the examination of every witneſs	ij s. iv d.
	For the copies of all examinations in court *per* ſheet	xij d.
	For all copies made by the attornies *per* ſheet	vj d.
	For entry of every rule	xij d.
	For entry of every caſe in the general book of hearing	xij d.
	For the entry and copy of every order not exceeding one ſide	iij s.
	If more, according to the length thereof	
	For the diſmiſſion of every defendant	ij s.
	For all coſts and for every pound	xij d.

The attornies fees of the court.

For every two defendants.	iij s. 4 d.
For every ſheet of paper copied by them	vj d.

The clerk of the proceſs fees beſides the ſeal.

Subp. attach. attach cum procl.	ij s.

For

For every commiſſion ad examinandum teſtes, dedimus poteſtatem, Superſedeas, Habeas Corpus, ne exeat regno, certiorari, writ of privilege, duces tecum, and injunction, for every one of them	vj s. viij d.
Commiſſion of rebellion	x s.

ESTABLISHED ORDERS,

De Termino Sanctæ Trinitatis, anno xxxviij° Elizabethæ Reginæ, Tho. Egerton Domino cuſtode magni ſigilli, in Camera Stellata, &c.

Reaſons moving the court to eſtabliſh the orders following.

FORASMUCH as it appeared by divers and ſundry motions at the bar, that there are many and frivolous ſuits preferred maliciouſly againſt a great number of her majeſties ſubjects, for vexation only, which ſuits the plaintiffs do not proſecute; whereby the defendants are forced to an infinite charge in bringing their learned councel to the bar:

Firſt, To move the court for a peremptory day for the plaintiff to ſhew cauſe, why his matter ſhould not be diſmiſſed for want of proſecution.

And ſecondly, to attend at the peremptory day appointed upon the firſt motion, to hear what can be ſhewed, and make anſwer: and whereas the lords, and others of this moſt honorable court, in hillary term, in the ſecond year of her highneſs's reign, gravely and honorably intending the eaſe of the ſubject in the premiſes, did eſpecially order, in reſpect to all perſons as then had put in their anſwers, the then laſt term, to ſuch bills as were exhibited againſt them, that if the plaintiffs ſhould not relpy unto the ſaid anſwers by the firſt ſitting of the next term, that then the defendants ſhould be diſmiſſed with their coſts.

Now this court of a very honorable regard to eaſe the intolerable charge of her highneſs's good and loving ſubjects, which daily grow and increaſe, in that behalf hath

thought fit and ordered accordingly, viz. that if the plaintiffs in any bill exhibited or to be exhibited ſhall ſuffer the next whole term after anſwer made to his or their bill, to paſs without replication, and ſhall not reply on the firſt day of the term then next enſuing; then the ſaid cauſe to be diſmiſſed with coſts, to be aſſeſſed by the right honorable the lord chancellor for the time being.

That all and every defendant finding himſelf aggrieved for want of proſecution after replication, and before publication, ſhall attend upon the clerk of the councel of this court, before any motion in court to be made for the diſmiſſion of any cauſe for want of proſecution, and thereupon the ſaid clerk calling to him the attornies on both parties, ſhall examine the ſtate of the ſame cauſe, and how lately the plaintiff hath proceeded therein; and ſo many as he ſhall find not to be proſecuted within three whole terms, that then every ſuch cauſe ſhall be diſmiſſed with coſts, to be taxed as aforeſaid, unleſs the plaintiff ſhall in the next term following ſhew good cauſe to the contrary in open court.

That every defendant finding himſelf aggrieved for want of proſecution after publication, ſhall likewiſe attend upon the clerk of this court, before any motion be made in open court, for the diſmiſſion of any cauſe for want of proſecution after publication, to examine the ſtate of the ſame cauſe in the preſence of the attornies on both ſides, and as many as he ſhall find not to be entered in the general book of hearing for judgment, within three terms after publication, ſhall likewiſe be diſmiſſed with coſts, to be taxed as aforeſaid, unleſs the plaintiff ſhall the next term following ſhew good cauſe to the contrary in open court.

That no plaintiff having ſerved any of the defendants named in his bill with proceſs, ſhall have any ſubpœna upon the ſame bill againſt any other to anſwer, after one term paſt after the exhibiting of his bill, unleſs the plaintiff take out proceſs againſt ſuch defendant upon the exhibiting of his bill, and that affidavit be made, that the plaintiff did his beſt endeavour to cauſe the ſaid proceſs to

be

be ſerved, but could not ſerve the ſame: that in ſuch caſes the defendants ſerved may proceed, as though the other not ſerved had not been named in the bill; that all proceſs ſhall be ſued out within ten days after the bill is exhibited.

That no plaintiff after proceſs ſued out upon his bill, ſhall add any more names into his bill without ſpecial warrant by the lord chancellor.

That neither the clerk of the court, nor any other officer, ſhall take any new fee more than hath been antiently uſed.

Provided always, that theſe orders ſhall not exclude the king's attorney, on the behalf of the king, to proſecute any cauſe ſo diſmiſſed.

N° XXXIX.

Of the Antiquity of Barons.

By Mr. AGARDE.

I Do not read that the noblemen of this realm of England were in any antient charters called by the name or title of Barons, before the coming in of the Normans. And although king Edward the Confeſſor brought into this land ſundry of the Norman laws (as one who had been brought up in Normandy) yet I cannot find the name of Baron in any of his charters, of which I have three in Latin made to Weſtminſter-Abbey, and many others written in the Saxon tongue; but in none of them doth the name of Baron occur; but inſtead thereof, *all my Theignes*; ſo that it may be fairly concluded, that the name of Baron was not uſed in England for the nobility in the times preceding the conqueror. Moreover in all the books written in the reigns of all the antient kings before the conqueſt, it may be obſerved, that after dukes and earls were named, then

then cometh in the next degree *Clito et Miniſter.* The conqueror directed his writs and charters *Gulielmus rex Angliæ omnibus Baronibus meis in Kent, Francis, Anglis, &c.*

In Doomſday book I find them named but in two places, the one in the town of Warwick, where are theſe words, *In Burgo de Warwick habuit rex, in dominio* 113 *domus, et Barones regis habent* 112, the other I will vouch after.

I have ſeen the inrollment of ſome charters and grants made by the great earls which he created after and at the conqueſt, and therein find that they did uſe the name of Barons. Henry de Ferrariis, in the foundation charter of Tutbury, expreſſeth himſelf thus; *Omnibus Baronibus meis tam Franceis quam Anglis*; alſo Hugh Lupus earl of Cheſter hath his Barons, of whoſe ſeats, in his parliament held there, ſome monuments remain in the caſtle of Cheſter.

Dignity. The Barons had a double authority, the one for the wars, in which they were to be ready with their power to reſiſt or invade as they ſhould be called on by the prince; the other for peace, firſt, to ſee it preſerved every where in their ſeveral baronies, and for which purpoſe they kept their courts, which to this day are called Court Barons; and ſecondly, to try, judge, and examine all manner of controverſies betwixt party and party, as is in the book of Doomſday ſet down in theſe words, under the title Somerſetſhire, in the town of Crediton. *Inſuper* T. R. *Willi diracionavit coram Baronibus regis eſſe ſuam terram*; and alſo to determine the law in the king's exchequer. In the laws of Canutus as publiſhed by Mr. Lambard, where he deſcribes a preacher, and how he ought to behave himſelf in integrity of life, it is ſet down, that if he live virtuouſly and chaſtly; *Dei miſerecordiam conſequatur et honorem ſeculi ſitque virronis privilegio dignus*; and my commentary over that word *Virronis* ſetteth *Baronis.* In the ſame laws I find a double ſort of *Virrones* quoted with Barons; for in that part where it is declared, what duties and armor ought to be paid to the king after the death of a nobleman, which he calleth *Exercitualia*, after he hath declared

what an earl ought to anſwer, he uſeth theſe words; *Primo Virronis, i. e. Baronis, vero regi qui ei proximus dignitate eſt, quatuor equi, duo cum ſellis, duo ſine ſellis; duo gladii; quatuor Lancei et totidem ſcuta, galca, et lorica nec non et* 50 *mance auri. Minoris autem virronis, equus, apparatus ejus, & armatura illius, aut collicipium ejus apud Weſt-ſexam, et apud Mirten, duæ libræ, et apud orientales Anglos, duæ libræ, et virronis exercitualia; apud Danos qui ſuum privilegium habet, quatuor libras.* So as it ſeemeth the Barons held all by knights ſervice, and paid theſe things as heriots, or reliefs, after their deaths, to the king.]

Barons are not to be put upon juries of aſſize, or queſts of inquiry of the death of any man, by coroners, eſcheats, or other inquiſitions, and thereupon to take oath, as appeareth by a pleading thereof made in the firſt time where they refuſed *manum ad librum apponere.* They are to try their peers, and to be tried by them, in caſes of treaſon, only upon their honor; they are not to be outlawed for debt, or their bodies to be arreſted for debt, but their lands are to be ſummoned, as appeareth by the Black book, in the ſecond part thereof. Privileges.

They may carry a banner diſplayed in the field, which inferior perſons cannot do.

They have authority next under the king to make laws as lords temporal.

And yet I find that they ought (and have done) to yield to the king an oath for their allegiance after the death of their anceſtors, wherein I remit myſelf to the records of the chancery; alſo in the Barons wars in all compoſitions made betwixt the king and them, they were ſworn, as many authors affirm.

In a treaty of peace betwixt the king of England, and the king of Scotland; I have ſeen an inſtance where both the kings were preſent at the time of its being concluded, and neither of them were ſworn, but inſtead thereof certain noblemen, almoſt twenty on a ſide, were ſworn for them, to obſerve the treaty, which treaty I ſhall ſhew to this company as better leiſure.

A. AGARDE.

N° XL.

N° XL.

Of Foreſts.

I. Their Etymology or definition of name.
II. Their Antiquity.
III. The Laws thereunto belonging.

By Mr. AGARDE.

IN the xxviii[th] chapter of the Black-book, which was written in the xxiii[d] year of the reign of king Henry the ſecond, as appeareth by the ſame book, a foreſt is de-defined in Latin, thus, *Foreſta eſt tuta ferarum manſio ſcilicet ſilveſtrium, non quibuſlibet in locis, ſed certis, et ad hoc idoneis; unde foreſta dicitur mutata* E *in* O, *quaſi ferarum ſtatio.* As the word *Statio* is by Iſidorus, in his etimologies, defined a place of ſtay of ſhips for a time; even ſo in like manner the king's deer being out of his foreſt and hunted, return to their home again for reſt, anſwering to the name of Foreſt; for they being returned, no man ought to purſue them further by the laws of the foreſts.

As for the antiquity of foreſts in England; I read that they were long before the conqueſt, for ſaint Edward returning from hunting in the foreſt of Clarendon, beſides Sariſbury, and coming to viſit his mother-in-law, was by her order ſlain whilſt he was drinking with her, to the end that her ſon Ethelred might enjoy the kingdom; we alſo find that king Edward the Confeſſor had his foreſt in Eſſex, as appeareth by his charter, beginning thus; *Ic Edward koning have given of my Foreſt the keeping, &c.*

That he had likewiſe a Foreſt at Windſor appeareth by Doomſday, where it is ſaid, that he changeth with the abbot of Weſtminſter, and giveth him the manor of Baltrichſey, now called Batterſey in Surrey, for the Wyndſores *where his Foreſt* was.

But after the conqueror entered, it appeareth by ſundry chronicles, that he converted divers towns in Hampſhire to be Foreſt, and made thereof New Foreſt, and conſtituted ſevere laws to be kept concerning the ſame.

By theſe laws of the Foreſt, it ſeemeth, that the kings of this realm after the conqueſt, and before king John's time, had this prerogative to make or put any man's manors or woods to be his Foreſt; for among the records of the Foreſts it is preſented, that king Henry the firſt, by the name of Henricus Senex, paſſing thorough Leiceſterſhire towards Scotland, ſaw iij ſtaggs in that place where the Foreſt of Rutland is, now called Lyefield, and finding the place fit to make a Foreſt, he committed the keeping thereof to one of his ſervants till his return, when he put over the keeping thereof to one Huſculfus; this rather appeareth to be ſo, becauſe, that king Stephen coming to be crowned after the death of the ſaid king Henry, and the people finding themſelves aggrieved with the multitude of Foreſts, and the rigour of the Foreſts laws, they moved him to grant redreſs in that and other things; whereupon he ſware to perform three things, among which this was one, *quod nullius clerici ſeu laici ſilvas in manu ſua retineret ſicut Henricus rex fecerat:* but mine author ſaith, *nil eorum tenuit.* For the laws of the Foreſts were ſuch as pleaſed the king to inflict upon the offenders for verte or venery, and not according to the laws of the land; *non juſtum abſolute*, but *juſtum ſecundum legem Foreſtæ.* So that I conclude, that Foreſts were here in England before the conqueſt, but that they never were in ſo great eſtimation, nor governed with ſo preciſe laws, as they were in the times of the conqueror and his ſons, who were given (as the Normans for the moſt part were) to take great delight in hunting.

N° XLI.

Of the Antiquity of Seals.

By Mr. AGARDE.

I FIND that there have been two ſorts of Seals, the one of of a leſſer ſize, which was uſed for the moſt part to ſeal letters, and from its being worn on the finger or thumb, was commonly called *Annulus*; and another, which was of more eſtate, and uſed for ſealing writings of commandment, gifts, leagues, and other public inſtruments. Of the former ſort uſed for ſealing letters, we read in the bible, as in Eſther chap. iii. v. 10 and 12. *Then the king took his ring from his hand and gave it unto Haman, &c.——And in the name of king Ahaſueroth, it was ſealed with the king's ring*; and again chap. viii^th^ v. 2. *And the king took off his ring which he had taken from Haman, &c.* Likewiſe in Geneſis chap xli, v. 42. we are told, that *Pharaoh took off his ring from his hand, and put it on Joſeph's hand.*

After this manner did the Romans uſe their rings as ſeals; for when Hannibal had ſlain Marcellus the conſul in an ambuſh, he took his ring, and counterfeited letters from him to ſundry towns, meaning thereby to ſurprize them; and Cicero writing to his friend Atticus, being conſul in the wars, giveth him this advice: *Sit annulus tuus non ut vas aliquod ſed tanquam ipſe tu; non miniſter alienæ voluntatis, ſed teſtis tuæ* *. That ſeals of eſtate were uſed by the Jews, we read in Jeremiah chap. xxxii. ver. 11. where it is ſaid; *So I took the book of the poſſeſſion being ſealed according to the law and cuſtom, &c.* Alſo the kings and other great ſtates in England before the conqueſt, uſed ſeals to their patents or commandments, as appeareth by the grant of king Edgar made to Weſtminſter-abbey anno 968, viz. *Et ut ab omnibus optimatibus noſtris & judicibus publicis & privatis melius ac certius, &c. credatur, manûs*

* Epiſt. ad Atticum lib. 1. epiſt. 1.

noſtræ

noſtræ ſubſcriptionibus eam decrevimus corroborari, ut de ſigillo noſtro juſſimus ſigillari.

Again, king Edward the ſon of king Ethelred in a charter of his, dated in uſes theſe words; *Ad ultimam cartam iſtam conſcribi et ſigillari juſſi*; and in another of his charters he ſaith; *Noſtræque imaginis ſigillo, inſuper aſſignari fecimus.*

N° XLII.

The Antiquity of the Word Sterlingorum or Sterling.

By Mr. TATE.

27th November 1590.

IN the ſtatutes of Edward the third mention is often made of this word *Sterling*; and I find in an old ſtatute without date, theſe words, *Quia multorum regum temporibus proviſum fuit, quod Denarius Argenti, ſclt. Sterlingus quoties neceſſitas expoſtulat divideretur in obolo.* Now I cannot imagine that this ſtatute, which is intitled *De Denariis demittendis*, was made ſince the time of king Edward the ſecond, becauſe the ſtatutes of his time and of later kings are very well known, and there are records extant, whereby we may learn where they were made; then, if like proviſion was made in the time of many kings before king Edward the ſecond, it muſt needs follow, that this word was uſed in king Henry the third's time, or before: but I remember not that I have read any thing thereof before king Edward the firſt's time, in the 18th year of whoſe reign, I find that the biſhop of Cheſter had liberties granted to him in the foreſt, in Staffordſhire, for which he acknowledged himſelf to owe the king M. *li. Sterlinge.*

It appeareth by the ſtatute called *Articuli de Moneta*, that the beſt way to know good money from counterfeit

The expoſition of the word.

and baſe coin, is to mark the ſtamp and impreſſion thereof. At the making of thoſe articles, there was money ſtamped with the miter, as appeareth article 1. and with lions article 2. which was baſe and naughty money And amongſt the French crowns we ſee ſome have a ſun upon them, which are called *Eſcues ſoliel*, and ſome have none. It ſeemeth therefore very probable to me, that the kings of this realm having diverſity of coins, cauſed thoſe that were of the beſt allay to be ſtriked with the print of a ſtar, which either for the ſmallneſs thereof was called a *Starling*, or elſe a *Starleng*, that is, money having on it the form or image of a ſtar; whereto I rather incline, finding other Engliſh coins to take their names of their impreſſions, as certain coins of Edward the firſt called *Pollchedds*, or *Pollards*. And in the 28th of Edward the firſt, I find in one record mention made both of *Sterling* money and *Pollard* money, where it is ſaid; *Solvet prior de Okeburne* cviij *li. Sterlingorum, et habet breve de perdonacione de* ccliiij *li. Pollardorum.*

But herein I hold nothing firmly, being ready to ſubſcribe to any opinion carrying with it more probability of reaſon.

N° XLIII.

Of Sterling Money.

By Mr. AGARDE.

In ſundry of the kings writs in Henry the third's time, as alſo in thoſe of king Edward the firſt, ſecond, and third, of liberate made in French, is uſed theſe words xx *l.* Sterling.

In the fines called *Pedes finium*, made in king John's time, and in his 6th, 7th, and 8th years are contained theſe words, *Et pro hac concordia, &c. Dedit ei viginti libras Eſterlingorum.*

The

The like alſo is uſed in the fines made in king Henry III. and ſometimes *Sterlingorum*; but in the time of Edward the firſt, and ſo downwards, always *Sterlingorum*.

I ſuppoſe that the name came to us by means of the Eſterlinges, who being Germans brought up in the mines of ſilver and copper there, were uſed here in England for the reducing and refining the diverſity of coins into a perfect ſtandard, as in the beginning of this queen's majeſty's reign they were brought hither by alderman Lodge (with whom I was familiarly acquainted) by her majeſty's order, for the refining of our baſe coins; this he told me, that the moſt of them in melting, fell ſick to death with the ſavour, ſo as they were adviſed to drink in a dead man's ſcull for their re-cure: whereupon he with others, who had the overſight of this work, procured a warrant from the council to take off the heads upon London-bridge, and make cups thereof, out of the which they drank, and found ſome relief, although moſt of them died.

per me ARTHURE AGARDE.

N° XLIV.

Of the ſame.

By Mr. WILLIAM PATTIN.

THE realm of England having ſmall quantity of ſilver mines, the ſupply of ſilver hath always been had out of Germany, where there is great ſtore; and the name of *Sterling* doth properly ſignify the allay which the Germans and Eſterlings firſt tried, found out, and brought hither. But there is no likelihood that the ſame was derived from the town in Scotland, for the true name of that is *Eſtryveling*, and it is at this day called by the name of *Stryveling*, and not *Sterling*.

N° XLV.

Of the ſame.

By Mr. BROUGHTON.

I THINK *Sterling* to proceed from the Eſterlinges, and that the uſe thereof was long before the time of king Edward the firſt, for I have ſeen an ancient deed dated in the beginning of the reign of king Henry the third, wherein is mention made of ſo much money *Sterling* paid by one Clemens Comitiſſe Ceſtrie et Lincolnie.

Mr. Fleetwood, ſerjeant at the law, and recorder of London, had an ancient book, in which was mentioned, that our Sterling came from the Eſterlinges, which book I lent to aldermen Martin, now maſter of the mint, and the ſame was never yet reſtored; and it is moſt like that the Sterling allay was firſt found in Germany, being a place wherein are greater ſtore of ſilver mines, by means whereof theſe Germans might and did attain to the firſt greateſt perfection in the trying and fining thereof.

BROUGHTON.

N° XLVI.

Of the ſame.

By Mr. JOHN STOWE.

THE word *Sterling* doth ſignify both the fineneſs and alſo the weight; the *Sterling Pence* were firſt coined, and after them the greateſt; the Eſterlinges were the deviſers of this allay, and were alſo the workmen in our mint, until of late time; and I have ſeen a book written by a maſter of the mint, in the time of king Henry the viiith, which deſcribeth the allay, and ſheweth that it took the name of the *Eſterlinges*.

N° XLVII.

Of the ſame.

By Mr. JOSEPH HOLLAND.

KING Edward the firſt having conquered a great part of Scotland, did cauſe to be coined the penny, having a croſs; which penny might be broken in ſunder, and divided into two parts, or into four; the half whereof was called a half-penny, and the quarter a farthing, or fourth part; this he cauſed firſt to be coined in the town of Sterling in Scotland, where he had a mint, and of the name of the ſame town, that penny or coin was called *Sterling*; and this is and hath been the common and received opinion of the people unto this day.

N° XLVIII.

Of the ſame.

By ANONYMOUS.

IT may be a queſtion, whether the word Sterling do ſignify the quantity of the coin, or elſe the quality and allay thereof; and I think, that it ſignifieth both. Concerning the firſt, which is the quantity, I find that there were in the time of king Henry the third three kinds of ſilver coin, that is to ſay, *Groſſum*, called now the groat, *Dimidium groſſum*, called the half groat, and *Sterlingorum*, which was Denarius, or the penny, the leaſt of the three. In compariſon whereof, the greater being called *Groſſum*, it is to be intended that *Sterlingorum* was the leaſt. For the money called *Obulus* in the time of king Henry the third, was no ſilver, as appeareth by a record, wherein mention is made of a payment of *Quingentas libras ſine Obulis*; becauſe that *Obulus* was baſe money. As concerning the quality, it appeareth that *Sterling* did ſometimes ſignify the allay; for in the time of king Edward the third, the king took order to have florens tried and ſtamped, how much they were Sterling: which

which muſt needs be underſtood of the allay. Alſo in a record of king Edward the third it likewiſe appeareth, that *Obulum argenteum* was brought out of Venice, whereof three *Faciunt unum Sterlingum:* and it further appeareth by record, that Margaret dutcheſs of Norfolk had licence to melt groats, half groats, and Sterlinges; by which it is evident, that there were certain ſpecial coins called by that name, and they different from the reſt, both in value and quantity. There was great difference in old time, if a man was bound to pay ſo much *Bonæ et legalis monetæ Angliæ*, or elſe ſo much *Sterlingorum*; for in the firſt, the party might make payment of any manner of money current in England, although it were baſe, but in the other, the payment ought to be of pure money of the Sterling allay. Further I note, that though in ſome records of Latin and Engliſh it be called *Sterling*; yet in the French records of England, it is always called *Eſterling*.

N° XLIX.

Of the ſame.

By Mr. THOMAS TALBOT.

AS the Florentines brought in money out of their country, which was called Floreins, and the money of Byzantium were called *Bezaunts*, ſo the money named Sterling was firſt brought into England by Eſterlinges, and of them ſo called: and ſo was alſo afterwards, all other money which was of the ſame allay as the Eſterlings brought in. And although the name of Sterling may ſeem ſomewhat to differ from Eſterling; yet there is greater difference in words of the like derivation: for the place or houſe now called the ſteel-yard, was at the firſt, after the name of thoſe Eſterlinges, called the Eſterling-yard. But the Sterling money was not firſt brought in about the time of king Edward the firſt; for Mathew Paris, a chronicler, that died before the time of Edward the firſt, maketh mention of Sterlingorum and Eſterlingorum in his book.

N° L.

Of the ſame.

By Mr. HENRY BURCHYER.

THERE is no likelihood that the king of England would place any mint at Sterling in Scotland, ſeeing that he never quietly enjoyed the town of Sterling, but with wars; neither is Scotland a place for the invention of fine and pure ſilver; nor yieldeth any ſtore of that metal, neither any cunning workmen for the trying or purifying thereof, but I rather think that it was brought in by the Eſterlinges, and of them ſo named, and not of the ſign of the ſtar: and this is to be noted that in all the fines that are levied of lands, the conſideration there is ſo much *eſterlingorum*. For the fabulous derivation of ſterling from Stryveling, in Scotland, is ſo far from the truth, as the town of Stryveling is diſtant from the foreſt of Hercinia in Germany: but it is moſt true, that as the allay or temper of the ſterling is perfect and pure, ſo the love of all men to that metal ought to be tempered with the allay of moderation and contentment, and not corrupted with unſatiable deſires; leſt, as being moderately uſed, it is medicinal and cordial to the heart, yet being taken in over great quantity and to full receipt, it becometh rank poiſon to the ſoul.

N° LI.

Of the ſame.

By MICHAEL HENEAGE.

THE name I find in the time of king John, often uſed as a word known and received from further antiquity, and as concerning the etymology of the worde, I hold with the common opinion, that the ſame was ſo named of the place from whence it was wonte moſt com-

monly to be brought hither: namely from ſuch countries as lie eaſterly from us; remembering that the weſtern known world of old time, was readier to fetch then bring hither any gold or ſilver.

I ſuppoſe it to be a word properly importing the alay of our Engliſh money of gold or ſilver, conſiſting of pure metal with as little allay or mixture of other metal, as may be.

Item, that whereas there was alſo current within this realme a coin of baſe metal; the word Sterling was uſed to diſtinguiſh the good and pure money from the other; and therefore, in all bonds or contracts for the payment of any ſum of money, this word *ſterlingorum* was uſed to exclude the ſaid baſe money, binding the party to yield pure money only; whereas otherwiſe theſe words, *legalis monete Angliæ* would have admitted any baſe coin. The nature whereof, as I obſerve, to have been for the moſt part of the ſmalleſt quantity called *obuli.* So were they permitted and uſed rather for petit and daily traffic of the common people, than for ſatisfaction of greater ſums; and therefore anno 13 H. III. I find in record *de* 500 *marcis libandis archiepo* B. *de bona moneta ſine obulis.*

Item, I obſerve further, that among ſundry coins current within this realm, being pure Sterling, the ſmalleſt and leaſt was one called *denarius,* weighing 32 grains, and being the leaſt piece of coined ſilver, and by that occaſion in common ſpeeche, this word *ſterlingus* was taken and uſed as we uſe now *denarius,* not unlike to the phraſe of our law, taking this word *Freehold* or *liberum tenementum* to imply only a bare freehold, and no inheritance. In like manner this word *ſterlingus* doth ſignify the meaneſt piece of ſterling or ſilver money; and accordingly anno 2 R. II. I find *quod denarius Anglicanus qui dicitur ſterlingus rotundus ſit,* &c. alſo anno 19 a licence was granted by the king to the counteſs of Norfolk *et A. B. aurifabro, London, quod ipſi groſſos dimidios groſſos ſterlingos ad valor. C. li. fundere, et inde vaſa argentea ad uſum dict. Margar. fac.* Alſo anno 22 E. II. an ordinance was made againſt certain foreign coins called *Luſhburghs.*

N° LII.

Of the Diviſion of Shires.

By Mr. JOSEPH HOLLAND.

THERE hath been ſundry diviſions of England in time paſt: Brute is ſaid to have divided it in three parts; and Cæſar doth make mention of four kings to be in Kent: divers ſmall parts were likewiſe ſtates of themſelves. But for the diviſion of England into ſhires, I find that king Alfred divided it into 38 ſhires or ſhares. In the days of king Offa there were found to be in England 39, and at this day there are 40, and 13 ſhires in Wales; ſo that in all there are at preſent 53 ſhires. The reaſon why king Alfred did make that diviſion was the better to withſtand the incurſions of the Danes, that in his time invaded England in divers places; alſo he divided it into leſſer parts, as into hundreds, wapentakes, lathes, and tithings; he provided alſo that every man ſhould procure himſelf to be received into *common* tithing, becauſe there were in each of them to the number of ten men, and one of them ſhould be ſurety for the other's good behaviour. If any one was found to be of ſo ſmall or baſe credit, that no man would become pledge or ſurety for him, he was to be committed to priſon leſt he might happen to do harm abroad.

JOSEPH HOLLAND.

N° LIII.

A project touching a Petition to be exhibited unto her Majeſty (Queen ELIZABETH) for the Erecting of a Library and an Academy for the Study of Antiquities and Hiſtory.

[Extracted from the Minute Books of the then Society of Antiquaries.]

1. THE ſcope of this petition, is to preſerve divers old books concerning the matter of hiſtory of this realm, original charters, and monuments, in a library to be erected in ſome convenient place of the hoſpital of the Savoy, St. Johns, or elſewhere.

2. Secondly, for the better information of all noblemen and gentlemen ſtudious of antiquity, whereby they may be enabled to do unto her majeſty and the realm, ſuch ſervice as ſhall be requiſite for their place.

3. This library to be intituled *the library of Queen Elizabeth*, and the ſame to be well furniſhed with divers ancient books and rare monuments of antiquity, which otherwiſe may periſh; and that at the coſts and charges of divers gentlemen which will be willing thereunto.

And therefore praying,

That it may pleaſe the queen's majeſty, to incorporate the perſons ſo ſtudious of antiquity, for the better preſervation of the ſaid library, and increaſe of knowledge in that behalf.

The name of this corporation to be *the academy for the ſtudy of antiquity and hiſtory founded by Queen Elizabeth*, or otherwiſe, as it ſhall pleaſe her majeſty.

The perſons and officers of which this corporation ſhall conſiſt, viz.

A governour or preſident, two guardians of the library, yearly to be choſen, and the fellows of the ſame academy, out

out of which fellows the governor or preſident, and guardians are yearly to be elected.

There are divers gentlemen ſtudious of this knowledge, and which have of a long time aſſembled and exerciſed themſelves therein, out of which company and others that are deſirous, the body of the ſaid corportion may be drawn.

That it would pleaſe the queen's majeſty to grant the cuſtody, and to commit the care of that library to the ſaid corporation, according to ſuch ordinances and ſtatutes, as it ſhall pleaſe the queen's majeſty to eſtabliſh.

That none ſhall be admitted into this corporation or ſociety, except he take the oath of the ſupremacy, and to preſerve the ſaid library to the beſt of his endeavour.

That it may pleaſe her majeſty to beſtow out of her gracious library, ſuch and ſo many of her books concerning hiſtory and antiquity, as it ſhall pleaſe her highneſs to grant for the better furniſhing of this library.

Concerning the Place, which it may pleaſe her Majeſty to appoint for this Library, and the Meeting of the ſaid Society.

The place may be either ſome convenient room in the Savoy, which may well be ſpared;

Or elſe in the late diſſolved monaſtery of St. Johns of Jeruſalem, or otherwiſe where it ſhall pleaſe her majeſty. And that there might be ordained in the ſaid letters patents of incorporation, certain honourable perſons to be viſitors to viſit the ſaid ſociety from five year to five year, or as often as it ſhall pleaſe her majeſty to appoint.

The Names of the Viſitors.

The archbiſhop of Canterbury, being of the privy-council.
The lord keeper of the great ſeal.
The lord treaſurer.
The lord admiral.
The lord chamberlain.
The principal ſecretary.
The lord chief juſtice of England.

Reaſons

Reaſons to move the Furtherance of this Corporation.

Firſt, becauſe there are divers and ſundry monuments worthy of obſervation, whereof the originals are extant in the hands of ſome private gentlement; and alſo divers other excellent monuments, whereof there is no record now extant, which by theſe means ſhall have publick and ſafe cuſtody for uſe when occaſion ſhall ſerve.

Secondly, by reaſon of the care which her majeſty's progenitors have had for the preſervation of ſuch ancient monuments, as for inſtance:

King Edward the Firſt, cauſed and committed divers copies of the records, and much concerning the realm of Scotland unto divers abbeys for the preſervance thereof, which for the moſt part are now periſhed, or rare to be had, and which privite by the diſſolution of monaſteries is detained.

The ſame king cauſed the libraries of all monaſteries and other places of the realm, to be purchaſed for the further and manifeſt declaration of his title, as chief lord of Scotland; and the record thereof now extant, doth alledge divers leger books of abbeys for the confirmation thereof: the like was done in the time of king Henry the Eighth.

Alſo when the Pope's authority was aboliſhed out of England by king Henry the Eighth, there was ſpecial care had of the ſearch of ancient Books and antiquities for manifeſtation unto the world of theſe uſurpations of the Pope.

Alſo there are divers treaties publiſhed by authority, for the ſatisfaction of the world in divers matters publick, which after they are by publick authority printed and diſperſed, they do after ſome time become very rare, for that there is no publick preſervation of them; and the like is the caſe of proclamations.

This ſociety will not be hurtful to either of the univerſities, for it ſhall not meddle with the arts, philoſophy, or other final ſtudies there profeſſed, for this ſociety tendeth to the preſervance of hiſtory and antiquity, of which the univerſities, long buſied in the arts, take little care or regard.

N° LIV.

A ſecond Diſcourſe touching the Earl Marſhals of England.

By Mr. CAMDEN.

3 Nov. 1603.

SOME learned men which have diſcourſed of offices and magiſtracies, in reſpect of ſome conveniencies in military matters, have thought the office of Marſhal in our age to be anſwerable to that of the *tribuni militum* in the ancient Roman ſtate; and of the *protoſtrator* in the late ſtate of the Greek or Eaſtern Empire. But the name of Marſhal now in uſe, which in proceſs of time hath aſcended unto ſo high a dignity, began at ſuch time as the Goths, Vandals, Franks, and other northern people overflowed Europe, who ſettling themſelves in the provinces of the Romans, liking well their Policy and Government, began not only to imitate the ſame, but alſo to tranſlate their titles of civil and military dignities into their own tongues; ſo they tranſlated, retaining the ſignification, *limitanei duces* into *marche-graffes*, *ſcutati* into *ſcheld knights*, *præfectus palatii* into *ſeneſchalk*, *comes ſtabuli* into *mar ſtaller*, *miniſter Dei* into *Gods ſchalk*, *præfectus equitum* into *marſchalk*. For all they who have lately traced out etymologies do conſent, that as *mar* and *mark* ſignify a horſe; ſo *ſchalk* ſignifies a ruler, an officer, or provoſt. But the French mollified this harſh concurrence of conſonants, and have made of *ſeneſchalk*, *Marſhalk*, &c. *ſeneſchal* and *marſhal*. This name (albeit happily the office might be) was not in uſe in this realm in the Saxon government; only they had their *ſtaller*, which by ſignification and authority of hiſtorians, doth ſeem to be all one with the Conſtable. But as this name came out of Germany with the Franks into France; ſo out of France firſt arrived here with the Normans. And Roger de Montgomery, which was Marſhall

ſhal of the Norman army at the conqueſt, is accounted the firſt Marſhal of England.

For ſome years after, there is in hiſtories no mention of this office, until in the confuſion under king Stephen, when as Maud Fitz-empreſs, for ſtrengthening of her part, made Milo, earl of Hereford, and conſtable of England; ſo he, for aſſuring his faction, made Gilbert Clare earl of Pembroke, and Marſhal of England, with the ſtate of inheritance, who in reſpect of his uſual habitation at Stryghall, was commonly called earl of Stryghall, in which office, his ſon Richard, ſurnamed *Strongbow* ſucceeded, who firſt opened the way to the Engliſh for the conqueſt of Ireland, by whoſe only daughter and heir, it deſcended to William Marſhal, who had by her five ſons, which died all without iſſue; and five daughters, the eldeſt of them named Maud, to whom, in the partition was aſſigned the office of Marſhal of England, with the mannor of Hampſtead Marſhal, which, as it is in old records, the Marſhals held in *Mareſcaugia, & per virgam Mareſchalliæ.*

This Maud was married to Hugh Bigod earl of Norfolk, whoſe ſon Roger, in right of his mother, was Marſhal of England, and after him Roger Bigod his nephew by his brother, who incurring the diſpleaſure of king Edward the firſt, by denying to ſerve him in Guienne, practiſing to hinder the king's expedition into Flanders, and diſſuading the commons to pay ſubſidies impoſed by parliament in that reſpect, for recovery of the king's favour ſurrendered up to the king for ever, both his earldom of Norfolk and office of Marſhal of England, which king Edward the ſecond granted to his brother Thomas of Brotherton, from whom it came inheritably to Thomas Mowbray, earl of Nottingham, whom king Richard the ſecond created Earl Marſhal of England; whereas in former time, they were ſtiled only Marſhals of England; and ſo from the Mowbrays to Howards, late dukes of Norfolk. Yet this office hath not ſo deſcended without interruption in the aforeſaid familiies, but that upon diſfavours and attainders, it hath been oftentimes conferred upon others, as appeareth by

by this catalogue of them, wherein they are ſet down ſucceſſively.

The Marſhals of England.

Roger de Montgomery, earl of *Shrewsbury*.
Walter Giffard, earl of *Buckingham*.
Robert Fitz-Ede, baſe ſon of king *Henry* I.
Gilbert de Clare, earl of *Pembroke*.
Richard his ſon, earl of *Pembroke*.
William Marſhall the elder, earl of *Pembroke*.
William his ſon, earl of *Pembroke*.
Richard his brother, earl of *Pembroke*.
Gilbert his brother, earl of *Pembroke*.
Walter his brother, earl of *Pembroke*.
Anſelm his brother, earl of *Pembroke*.
Roger Bigod, earl of *Norfolk*.
Roger his brother's ſon, earl of *Norfolk*.
Roger, lord *Clifford*.
Nicholas, lord *Segrave*.
Thomas Brotherton, ſon to king *Edward* the firſt, earl of *Norfolk*.
William Montacute, earl of *Salisbury*.
Thomas Beauchamp the elder, earl of *Warwick*.
Edmund Mortimer, earl of *March*.
Henry, lord *Percye*.
John Fitz-Alan, lord *Maltravers*.
Thomas Holland, earl of *Kent*, half brother of king *Richard* the ſecond.
Thomas Mowbray, earl of *Nottingham*.
Thomas Holland, duke of *Surrey*.
John Montacute, earl of *Salisbury*.
Ralph Nevill, earl of *Weſtmoreland*.
Thomas Mowbray, earl of *Nottingham*.
John his brother, duke of *Norfolk*.
John Holland, earl of *Huntingdon*.
John Mowbray, duke of *Norfolk*.
John Mowbray his ſon, duke of *Norfolk*.

Richard, ſon of king *Edward* the fourth, duke of *York* and *Norfolk*.

Thomas Grey, knight.

John Howard, duke of *Norfolk*.

William, marquiſs *Berkeley*, and earl of *Nottingham*.

Henry, duke of *York*, ſon to king *Henry* the ſeventh.

Thomas Howard, earl of *Surrey*, afterwards duke of *Norfolk*.

Charles Brandon, duke of *Suffolk*.

Thomas Howard, duke of *Norfolk*.

Edward Seymour, duke of *Somerſet*.

John Dudley, duke of *Northumberland*.

Thomas Howard, duke of *Norfolk*, reſtored.

Thomas Howard his nephew, late duke of *Norfolk*.

George Talbot, earl of *Shrewsbury*.

Robert Devereux, earl of *Eſſex*, deſcended from *Eva de Breoſa*, daughter and co-heir of *William Marſhall*, earl of *Pembroke*, by the *Bohuns*, earls of *Hereford* and *Eſſex*, and from *Ralph Bigod* brother unto *Roger Bigod*, marſhal, by *Lacy Verdon* and *Crophull*.

Thomas Howard, earl of *Arundel* and *Surrey*.

Henry Howard, ſon of *Thomas* aforeſaid.

Thomas Howard, ſon of *Henry*, and duke of *Norfolk*.

Henry Howard, brother of the laſt *Thomas*, and to the *heirs male* of his body.

Henry Howard, ſon of the laſt *Henry*.

Thomas Howard, the preſent duke of *Norfolk*.

N° LV.

Of the Antiquity and Etymology of Terms and Times for Adminiſtration of Juſtice in ENGLAND*.

Anno 1604.

Of the TERMS in general.

AS our Law-books have nothing to my knowledge of the *Terms*, ſo were it much better if our Chronicles had as *little*; for though it be little they have in that kind, yet is that little very untrue, affirming that *William the Conquerour* did firſt inſtitute them. It is not worth the examining who was *Authour* of this error, but it ſeemeth that † *Polydore Virgil* (an alien in our commonwealth, and not well endenized in our antiquities) ſpread it firſt in print. I purpoſe not to take it upon any man's word: but, ſearching for the fountain, will, if I can, deduce them from thence, beginning with their definition.

The terms are certain portions of the year in which only the king's juſtices hold plea in the high temporal courts of cauſes belonging to their juriſdiction in the place thereto Definition.

* The meetings of the College or Voluntary Society of Antiquaries, which were diſcontinued in the year 1604 or thereabouts, being re-aſſumed in 1614, the members agreed on two queſtions for their next meeting, one of which was, *Touching the antiquity and etymology of law terms and times for adminiſtration of juſtice in England.* This occaſioned Sir Henry Spelman to write the preſent diſcourſe; but king James the 1ſt diſliking the ſociety from an apprehenſion that the members intended to intermeddle with matters of ſtate, commanded them to forbear any further meetings. Sir Henry Spelman being thus diſappointed of reading his diſcourſe to the ſociety, cauſed it to be printed. But as the intention of theſe volumes is to collect together, and lay before the reader at one view, all the ſeveral diſcourſes which were written by the moſt celebrated antiquaries who flouriſhed in the latter end of the ſixteenth, and beginning of the ſeventeenth centuries, and who compoſed the then College or Voluntary Society of Antiquaries, it is preſumed, that the making Sir Henry Spelman's diſcourſe part of this work will not be deemed improper.

† *Deinde conſtituit* [Gulielmus Conquæſtor] *ut quater quotannis, &c. lib. 9. p. 154. l. 16. &c.*

aſſigned, according to the antient rites and cuſtoms of the kingdom.

The definition divides itſelf, and offers theſe parts to be conſidered.

I. The *Names* they bear.
II. The *Original* they come of.
III. The *Time* they continue.
IV. The *Perſons* they are held by.
V. The *Cauſes* they deal with.
VI. The *Place* they are kept in.
VII. The *Rites* they are performed with.

Theſe parts miniſter matter for a book at *large*, but my purpoſe upon the occaſion impoſed being to deal only with the *Inſtitution* of the forms, I will travel no farther than the *three* firſt ſtages of my diviſion (that is) touching their *Name*, their *Original*, and their *Time* of continuance.

Of the Names of the TERMS.

The word *Terminus* is of the Greek Τέρμα, which ſignifieth the *Bound*, *End*, or *Limit* of a thing, here particularly of the *Time* for law-matters. In the civil law it alſo ſignifieth a day ſet to the defendant, and in that ſenſe doth *Bracton* and others ſometimes uſe it: *Mat. Paris* calleth the Sheriff's *Turn*, *Terminum Vicecomitis*, and in the addition to the MSS. laws of king *Inas*, *Terminus* is applied to the hundred-court; as alſo in a charter of *Henry* I. preſcribing the time of holding the court, and we ordinarily uſe it for any ſet portion of time, as of life, years, leaſe, &c.

The ſpace between the terms is named *Vacation*, a *Vacando* as being leiſure from law-buſineſs, by Latiniſts *Juſtitium a jure ſtando*, becauſe the law is now at a *ſtop* or *ſtand*.

The Civilians and Canoniſts call Term-time *Dies juridicos*; Vacation, *Dies feriales*, days of leiſure, or intermiſſion, feſtival days, as being indeed ſequeſtered from troubleſome affairs of human buſineſs, and devoted *properly* to the ſervice of God and his church. According to this,

our

our *Saxon* and *Norman* anceſtors divided the year alſo between *God* and the *King*, calling thoſe days and parts that were aſſigned to God, *Dies pacis Eccleſiæ*, the reſidue allotted to the king, *Dies*, or *Tempus pacis regis*.

Diviſium imperium cum Jove Cæſar habet.

Other names I find none antiently among us, nor the word *Terminus* to be frequent, till the time of *Henry* II. wherein *Gervaſcius Tilburienſis* and *Ranulphus de Glanvilla* (if thoſe books be theirs) do continually uſe it for *Dies pacis regis*.

The ancient *Romans*, in like manner, divided their year between their *Gods* and their *Commonwealth*, naming their law-days or term-time *Faſtos*, becauſe their *Prætor* or judge might then *Fari*, that is, ſpeak freely; their vacation or days of intermiſſion (as appointed to the ſervice of their gods) they called *Nefaſtos*, for that the *Prætor* might *Ne fari*, not ſpeak in them judicially.

Ovid. Faſtorum *Lib.* 1.

Ille Nefaſtus erat, per quem tria verba ſilentur,
Faſtus erat per quem lege licebat agi.

When that the three judicial words
The Pretor might not uſe,
It was Ne faſtus; Faſtus then,
When each man freely ſues.

The three judicial words were *Do*, *Dico*, *Abdico*; by the firſt he gave licence, *Citare partem ream*, to *Cite* the defendant; by the ſecond he pronounced *ſentence*; and by the third he granted *execution*. This *obiter*.

The word *Term* hath alſo other conſiderations; ſometimes it is uſed for the *whole* ſpace, from the *firſt* return to the *end* of the term, including the day of *Return*, *Eſſoine*, *Exception*, *Return*, Brev. Sometimes and moſt commonly excluding theſe from the firſt ſitting of the judges in full court (which is the firſt day for appearance) and this is called *Full-term* by the *Statute* of xxxii *of Henry* VIII. *cap.* 21, as though the part precedent were but *Semi-term*,

See ſect. 5, cap. 6.

Semi-term, Puiſne-term, or, *Introitus-termini:* The words of the *Statute* are theſe: *That Trinity-term ſhall begin the Munday next after Trinity-ſunday for keeping the Eſſoines, Returns, Proffers, and other Ceremonies heretofore uſed, &c. and that the Full-term of the ſaid Trinity-term ſhall yearly for ever begin the Friday next after Corpus-Chriſti-Day.* Here the particulars I ſpeak of are apparently ſet forth, and the Term declared to begin at the *firſt* return; by which reaſon it falleth out that the eight days wherein the court of the Exchequer ſits, at the beginning of Michaelmas-term, Hilary-term, and Eaſter, are to be accounted as *parts* of the Terms, for that they fall within the *firſt* return: the exchequer having *one* return in every of them, more than the courts of common-law have, viz. *Craſtino Sancti Michaelis, Octabis Hilarii*, and *Octabis* or *Clauſum Paſchæ:* and it ſeemeth that Trinity-term had *Craſtino Trinitatis* in the ſelf-ſame manner, before this ſtatute altered it.

Of the Original of Terms or Law-days.

Law-days or *Dies Juridici*, which we call *Terms*, are upon the matter as antient as *Offences* and *Controverſies*. God *himſelf* held a kind of Term in *Paradiſe*, when judicially he tryed and condemned *Adam, Eve*, and the *Serpent*. In *all* Nations, as ſoon as government was ſettled, ſome *time* was appointed for puniſhing offences, redreſſing of wrongs, and determining of controverſies; and this time to every of thoſe nations was their *Term*. The *Original* therefore of the Terms or Law-days, and the *time* appointed to them, are like the ſigns of oblique aſcenſion in aſtronomy that riſe together. I ſhall not need to ſpeak any more particularly of this point, but ſhew it, as it farther offereth itſelf in our paſſage, when we treat of the time appointed to Term or Law-days, which is the next and longeſt part of this our diſcourſe.

Of the Times aſſigned to Law-matters, called the Terms.

We are now come to the great arm of our diviſion, which ſpreads itſelf into many branches, in handling whereof we ſhall

ſhall fall, either *neceſſarily* or *accidentally*, upon theſe points, viz.

I. Of Law-days among the *Antients*, *Jews*, and *Greeks*.

II. Of thoſe among the *Romans* uſing *choice* days.

III. Of thoſe among the *Primitive* chriſtians uſing all alike.

IV. How *Sunday* came to be exempted.

V. How other *Feſtivals*, and other *Vacation* days.

VI. That our *Terms* took their original from the *Canon-law*.

VII. The conſtitutions of our *Saxon* kings, Edward the elder, *Guthrun the Dane*, and the ſynod of *Eanham* under *Ethelred* touching this matter.

VIII. The conſtitutions of *Canutus* more *particular*.

IX. The conſtitutions of *Edward* the Confeſſor more *material*.

X. The conſtitution of *William* the *Conqueror*. And of Law-days in *Normandy*.

XI. What done by *William Rufus*, *Stephen*, and *Henry* the ſecond.

XII. Of *Hilary-term* according to thoſe ancient laws.

XIII. Of *Eaſter-term* in like manner.

XIV. Of *Trinity-term*, and the long Vacation following.

XV. Of *Michaelmas-term*.

XVI. Of the *later* Conſtitutions of the Terms by the *Statutes of the* 51ſt *of* Henry III. *and* 36th of Edward III.

XVII. How *Trinity-term* was *altered* by the 32d of Henry VIII.

XVIII. And how *Michaelmas-term* was abbreviated by Act of Parliament 16th *Carol.* I.

Of Law-days among the Ancients.

The time allotted to law buſineſs, ſeemeth to have been that from the beginning amongſt all, or moſt nations, which was not *particularly* dedicated (as we ſaid before) to the ſervice of *God*, or ſome rites of *Religion*. Therefore, whilſt *Moſes* was yet under the law of nature, and before the

the poſitive law was given, he ſacrificed, and kept the holy feſtival with *Jethro* his father-in-law on the *one* day, but judged not the people till the day *after*; ſome particular inſtance (I know) may be given to the contrary, as I ſhall mention, but this ſeemeth to have been at that time the *general* uſe.

Greeks. The *Greeks*, who (as *Joſephus* in his book againſt *Appion* witneſſeth) had much of their ancient rites from the *Hebrews*, held *two* of their * *Prytanæan days* in every month for civil matters, and the *third* only for their *Sacra*.

Æſchines, in his oration againſt *Cteſiphon*, chargeth *Demoſthenes* with writing a decree in the ſenate, that the † *Prytanæan Magiſtrates* might hold an aſſembly upon the 8th day of the approaching month of ‡ *Elaphebolion*, when the holy rites of *Æſculapius* were to be ſolemnized.

Romans. The *Romans* likewiſe (whether by *inſtinct* of nature or *precedent*) meddled not with law cauſes during the time appointed to the worſhip of their Gods, as appeareth by their *primitive* law of the 12 Tables. *Feriis jurgia amovento*, and by the places before cited, as alſo this of the ſame *Tables*.

Poſt ſemel exta Deo data ſunt licet omnia fari,
Verbaque honoratus libera Prætor habet.

When ſacrifice and holy rites were done,
The reverend Pretor then his courts begun.

To be ſhort, it was ſo *common* a thing in thoſe days of old to exempt the times of exerciſe of *Religion* from all *worldly* buſineſs, that the barbarous nations, even our *Angli*, whilſt

* *Every month had about ſix more or leſs of them, ſo called becauſe on them the* Prytanæan *magiſtrates might hold court.*

† *So called from the* Πρυτανειον *where their buſineſs was to ſit only on things inanimate, as when a piece of ſtone, timber, or iron, &c. fell on a man, if the party that flung it were not known, ſentence was paſt on that thing which ſlew him; and the maſters of this court were to ſee that thing caſt out of the territories of* Athens. *See the* Attick *Antiq. l. 3. chap. 3. ſect. 4.*

‡ *The month* February, *or, as others would have it* March, *when ſacrifices were moſt uſually offered to the goddeſs* Diana, Ελαφηβολιων ab Ελαφηβολος, cognomen Dianæ, quod eſt, jaculis cervos figens.

they were yet in *Germany*, the *Suevians themſelves* and others of thoſe northern parts would in no wiſe violate or interrupt it. * *Tacitus* ſays of them, that during this time, *Non bellum ineunt non arma ſumunt, clauſum omne ferrum; pax & quies tunc tantum nota, tunc tantum amata.* Of our *German* anceſtors we ſhall ſpeak more anon; our *Britiſh* are little to the purpoſe; they judged all controverſies by their Prieſts the *Druides*, and, to that end, met but once a year, as *Cæſar* ſheweth us by thoſe of the *Gauls*.

I will therefore ſeek the *Original* of our Terms only from the *Romans*, as *all* other nations that have been ſubject to their civil and eccleſiaſtical monarchy *do* and muſt.

Of Law-days amongſt the ROMANS uſing Choice-days.

The *antient* Romans, whilſt they were yet heathens, did not, as we at this day, uſe certain continued portions of the *year*, for a legal deciſion of controverſies, but, out of a ſuperſtitious *conceit*, that ſome days were ominous, and *more* unlucky than others (according to that of the *Ægyptians*,) they made *one* day to be *Faſtus*, or Term-day; and another (as an *Ægyptian* day) to be *Vacation* or *Ne faſtus*: ſeldom two *Faſti* or Law-days together, yea they ſometimes divided *one* and the *ſame* day in this manner.

Qui modo Faſtus erat, mane Nefaſtus erat.

The afternoon was Term, the morning Holy-day.

Nor were all their *Faſti* applied to judicature, but ſome of them to other meetings and conſultations of the commonwealth; ſo that being divided into three ſorts, which they called *Faſtos Proprie*, *Faſtos Interciſos*, and *Faſtos Comitiales* they contained together 184 days, yet through all the months in the year there remained not properly to the Prætor, as *Judicial* or *Triverbal-days*, above 28; whereas, before the abbreviation of Michaelmas-term by the ſtatute of 16 *Car.* I. we had in our Term above 96 days in court, and now have 86 *beſides* the Sundays and exempted feſti-

* Lib. de Moribus Germ. cap. 40.

† De bello Gallico lib. 6.

vals which fall in the Terms; and thoſe are about 28 or thereabout. Sir *Thomas Smith* counts it ſtrange, that *three* tribunals in *one* city in leſs than a *third* part of the year, ſhould ſatisfy the wrongs of ſo *large* and *populous* a nation as *this* of *England*. But let us return where we left off.

De rep. Ang. lib. 3.

Of Law-days amongſt the Primitive Chriſtians, and how they uſed all times alike.

To beat down the Roman ſuperſtition touching the obſervation of days, againſt which *St. Auguſtine* and others wrote vehemently, the Chriſtians at firſt uſed all days alike for hearing of cauſes, not ſparing (as it ſeemeth) the *Sunday* itſelf, thereby falling into another extreme; yet had they ſome precedent for it from *Moſes* and the *Jews*; for *Philo Judæus* in the life of *Moſes* reporteth, that the cauſe of him, that gathered ſticks on the *Sabbath-day*, was, by a ſolemn council of the princes, prieſts, and the *whole* multitude, examined and conſulted of on the *Sabbath day*; and the *Talmudiſts*, who were beſt acquainted with the Jewiſh cuſtoms, as alſo *Galatinus* the Hebrew, do report that their judges in the council, called *Sanhedrim*, ſat on the week day from morning to night, in the *Gates* of the city, and, on the Sabbath, and on feſtivals, upon the walls. So the whole year then ſeemed a *continual* Term, no day exempted: how this ſtood with the Levitical-law, or rather the moral, I leave to others.

Lib. 3.

How SUNDAY came to be exempted.

But, for the reformation of the abuſe among Chriſtians, in perverting the Lord's day to the hearing of clamorous litigants, it was ordained in the year of our redemption 517 by the fathers aſſembled in *Concilio Taraconenſi*, cap. 4. after that in *Concilio Spalenſi*, cap. 2. and by *Adrian* biſhop of Rome in the *Decretal caus.* 15. *quæſt.* 4, that, *Nullus Epiſcopus vel infra poſitus Die dominico cauſas judicare* (aut ventilare) *præſumat: No biſhop or inferior perſon preſume to judge or try cauſes on the Lord's day.* For it appeareth

peareth by *Epiphanius*, that in his time (as alſo many *hundred* years after) biſhops and clergymen did hear and determine cauſes, leſt Chriſtians, againſt the rule of the apoſtle, ſhould go to law under *Heathens* and *Infidels*.

This *Canon* of the church, for exempting Sunday, was by *Theodoſius* fortified with an *Imperial* conſtitution, whilſt we Britains were yet under the Roman Government; *Solis die, quem dominicum certe dicere ſolebant majores, omnium omnino litium & negotiorum quieſcat intentio.*

Thus was *Sunday* redeemed from being *part* of the Term; but all *other* days by *expreſs* words of the canon were left to be *Dies Juridici*, whether they were *mean* or *great* feſtivals; for it thus followeth in the ſame place of the * *Decretals*; *Cæteris vero diebus convenientibus perſonis illa quæ juſta ſunt habent licentiam judicandi, excepto criminali* (or, as another edition reads it) *exceptis criminalibus negotiis.* The whole canon is *verbatim* alſo decreed in the *Capitulars* of the emperors † *Carolus* and *Ludovicus*.

How OTHER Feſtival and Vacation Days were exempted.

Let us now ſee how *other* feſtivals and parts of the year were taken from the *Courts* of *Juſtice*. The *firſt* canon of note that I meet with to this purpoſe is that in *Concilio Triburienſi* cap. 35. in or about the year 895. *Nullus comes, nulluſque omnino ſecularis diebus dominicis vel ſanctorum in teſtis ſeu quadrageſſimæ, aut jejuniorum, placitum habere, ſed nec populum præſumat illo coercere.*

After this manner the council of ‡ *Meldis*, cap. 77. took Eaſter-week, commonly called the *Octaves*, from law-buſineſs; *Paſchæ hebdomode feriandum, forenſia negotia prohibentur.* By this example came the Octaves of *Pentecoſt*, *St. Michael*, the *Epiphany*, &c. to be exempted, and principal feaſts to be honoured with *Octaves*.

The next memorable council to that of *Tribury* was the council of *Ertford* in *Germany* in the year 932, which

* Caus. 15. quæſt. 4. cap. 1. † Lib. 6. cap. 245. a Benedict. Levita.
‡ Bin. tom. 3. part. 1. ſect. 2. circa annum Chriſti 845.

though it were then but *Provincial*, yet being afterwards taken by *Gratian* into the body of the cannon law, it became *General*, and was impoſed upon the *whole* church. I will recite it at large, as it ſtands in * Binius, for I take it to be one of the foundation-ſtones to our terms. *Placita ſecularia dominicis vel aliis teſtis diebus, ſeu etiam in quibus legitima jejunia celebrantur ſecundum canonicam inſtitutionem, minime fieri volumus inſuper quoque glorioſiſſimus rex Francorum (Henricus) ad augmentum Chriſtianæ religionis conceſſit*, (or, as † *Gratian* hath it, Sancta Synodus decrevit) *ut nulla judiciaria poteſtas licentiam habeat Chriſtianos ſuâ authoritate ad placitum bannire ſeptem diebus ante Natalem Domini, & à ‡ Quinquageſſima uſque ad Octavas Paſchæ, & ſeptem diebus ante Natalem Sancti Johannis Baptiſtæ, quatinus adeundi eccleſiam orationibuſque vacandi liberius habeatur facultas.* But the council of St. Medard extant firſt in § *Burchard* and then in *Gratian* enlargeth theſe vacations in this manner; *Decrevit Sancta Synodus, ut a Quadrageſſima uſque in Octavam Paſchæ, & ab Adventu Domini uſque in Octavam Epiphaniæ, nec non & in Jejuniis quatuor temporum, & in litaniis majoribus, & in diebus dominicis, & in diebus rogationum (niſi de concordia & paciſicatione) nullus ſupra ſacra Evangelia jurare præſumat.* The word (*jurare*) here implyeth *Law cauſes*, or hold plea on theſe days, as by the *ſame* phraſe in *other* laws ſhall by and by appear, which the *Gloſs* alſo upon this canon maketh manifeſt, ſaying, *In his etiam diebus cauſæ exerceri non debent*; citing the other ‖ canon here next before recited, but adding withall, that the court and cuſtoms of *Rome* itſelf doth not keep vacation from *Septuageſſima*, nor, as it ſeemeth, on ſome other of the days. And this precedent we follow, when *Septuageſſima* and *Sexageſſima* fall in the compaſs of *Hilary-term*.

* Concil. tom. 3. part 2. page 142. In iſtius concil. cap 2. † Decret caus. 15. quæſt. 4 cap. 1. ‡ Al Septuageſſima. § Caus. 22. q. 5 cap. 17. ‖ Caus. 15. q. 4. cap. 1.

That

That our Terms take their ORIGINAL from the CANON Law.

Thus we leave the *Canon Law*, and come home to our own country, which out of *theſe*, and ſuch *other* foreign conſtitutions (for many more there are) has framed our terms, not by chuſing any ſet portion of the year for them, but by taking up ſuch times for that purpoſe, as the *Church* and common neceſſity (for collecting the fruits of the earth) left undiſpoſed of, as in that which followeth plainly ſhall appear.

The Conſtitutions of our Saxon Kings in this Matter.

INA one of our Saxon kings made a very ſtrict law againſt working on Sunday.

* Gif þeop mon þýnce on ſunnan dæg. be hiſ hlaford hæfe. ſý he freo.

If a Servant work on Sunday by his maſter's command, let him be made free.

And † *Alured* prohibited many feſtivals, but the firſt that prohibited juridical proceedings upon *ſuch* days, was *Edward* the *Elder* and *Guthurne* the *Dane*, who in the league between them, made about ten years before the council of *Ertford* (that it may appear we took not all our light from thence) did thus ordain;

‡ Ordel ⁊ aþaſ ſýndon tocpedene. fneolſ dagum. ⁊ muhte fæſten dagum.

We forbid that Ordel and Oaths (So they called law-tryals at that time) *be uſed upon feſtival and lawful faſting days, &c.*

How far this law extended appeareth not *particularly*, no doubt to all feſtival and faſting-days then impoſed by the *Roman Church*, and ſuch other *Provincial* as by our kings and clergy here were inſtituted. Thoſe which by *Alured* were appointed to be feſtivals, are now by this law made alſo days of vacation from judicial trials, yet ſeem

* Legum cap. 3. † Legum Alured, Cap. 39. ‡ Vide F. dus *Edwardi* and *Guthurni* Regum, Cap. 9.

they

they for the moſt part to be *Semi-Feſtivals*, as appointed only to *Freedmen* not to *Bondmen*, for *ſo* this * law declareth, viz. the twelve *days* of *Chriſtmas*, *the day wherein Chriſt overcame the Devil*, *the anniverſary of Saint Gregory*, *the ſeven days afore Eaſter*, *and the ſeven days after the day of Saint Peter and Saint Paul*, *and the whole week before* Saint Mary *in the harveſt*, *and the feaſt day of All Saints*. *But the four Wedneſdays in the four Ember Weeks are remitted to bondmen, to beſtow their work in them as they think good.*

The Synod of Eanham.

To come to that which is more perſpicuous, I find about † *ſixty* years after, a canon in our ‡ *Synod* of *Eanham* under king *Ethelred* in theſe words: firſt, touching Sunday, [c] *Dominicæ ſolennia diei cum ſummo honore magnopere celebranda ſunt, nec quicquam in eadem operis agatur ſervilis. Negotia quoque ſecularia quæſtioneſque publicæ in eadem depaunantur die.*

Can. 16. Can. 17. Can. 18.

Then commanding the feaſt-days of the [c] *Bleſſed Virgin* and of all the [c] *Apoſtles*, the faſt of the *Ember* days, and of the Friday in every week, to be duly kept; it proceeded thus, *Judicium quippe quod Anglice Ordel dicitur, & juramentu vulgaria, feſtivis temporibus & legitimis jejuniis, ſed & ab Adventu Domini uſque poſt Octabas Epiphaniæ, & a Septuageſſima uſque 15 dies poſt Paſcha minime exerceantur: Sed ſit his temporibus ſumma pax et concordia inter Chriſtianos, ſicut fieri oportet.* It is like there were ſome former conſtitutions of our church to this purpoſe; but either mine eye hath not lighted on them, or my *memory* hath deceived me of them.

Canutus ſucceeding ſhortly after by his Daniſh ſword in our Engliſh kingdom, not only *retained* but *revived* this former conſtitution, adding, after the *manner* of his zeal, two new feſtival and vacation days.

* *See the aforeſaid* 39th *Chapter of the laws of* king Alured. † It was held between the years 1006, and 1013. See the author's conc. Britan. tom. 1. page 510. ‡ The word Synod here ſignifies more than council, not as it is uſually reſtrained to that of the clergy only. [c] Concil. Eanham, can. 15.

And

And ƿeꝛodbeoꝛað oncal. ⁊ aðꝛ ꝼꝛeolp ᵹaꝛum. ⁊ ymbꝛen ᵹaꝛum. ⁊ lenᵹten ᵹaꝛum. ⁊ nihꝛ ꝼæꝛꝛten ᵹaꝛum ⁊ ꝼꝛam Adventum ꝺominꝛ oꝛꝛe eah ꝺoꝛa ꝺaᵹ; Canuti ᵹeꝛa chap. 17.

And we forbid Ordel and Oaths on Feaſt-days, and Ember-days, and Lent, and ſet Faſting-days, and from the Advent of our Lord till eight days after [the] *twelve* [days] *be paſt; and from Septuageſſima till fifteen nights after Eaſter; and the ſages have ordained that* Saint Edward's *day ſhall be Feſtival over all* England *and on the* 15*th of the kalends of* April, *and* Saint Dunſtan's *on the* 14*th of the kalends of* June, *and that all Chriſtians* (*as right it is*) *ſhould keep them hallowed, and in peace.*

Canutus following the example of the ſynod of *Eanham*, ſetteth down in the paragraph next before this recited, *which* ſhall be Feſtival, and *which* Faſting-days appointing both to be days of vacation. Among the Faſting-days he nameth the *Saints Eves* and the Fridays; but excepteth the Fridays, when they happen to be Feſtival days and thoſe which come between *Eaſter* and *Pentecoſt*; as alſo thoſe between *Midwinter* (ſo they called the nativity of our Lord) and *Octabis Epiphaniæ*; ſo that at this time ſome Fridays were law days, and *ſome* were not. Thoſe in Eaſter term, with the eve of *Philip* and *Jacob*, were, and the reſt were not. The reaſon of this partiality (as I take it) was, they faſted not at Chriſtmas, for *joy* of Chriſt's *nativity*, nor between Eaſter and Whitſontide, for that Chriſt *continued* upon the earth from his reſurrection till his aſcenſion; and *the children of the wedding may not faſt ſo long as the bridegroom is with them*; nor at Whitſuntide, for *joy* of the *coming* of the *Holy Ghoſt*.

Mat. 9. 15. Mark 2. 19.

The Conſtitution of EDWARD *the* CONFESSOR *moſt material.*

Saint *Edward* the *Confeſſor* drew this conſtitution of of *Canutus* nearer to the courſe of our time, as a law in theſe words; *Ab Adventu Domini uſque ad Octabas Epiphaniæ pax Dei & ſanctæ eccleſiæ per omne regnum; ſimiliter a Septuageſſima uſque ad Octabas Paſchæ; item ab Aſcenſione Domini uſque ad Octabas Pentecoſtis; item omnibus diebus*

Leges Ed. Conf. c. 9.

Quatuor Temporum; *item omnibus Sabbatis ab hora nona, & tota die ſequenti, uſque ad diem Lunæ*; *item Vigiliis Sanctæ* Mariæ, *Sancti* Michaelis, *Sancti* Johannis Baptiſtæ, *apoſtolorum omnium & ſanctorum, quorum ſolennitates a ſacerdotibus Dominicis annunciantur diebus, & omnium ſanctorum in kalendis* Novembris, *ab hora nona vigiliarum, & ſubſequenti ſolennitate: item in parochiis in quibus dedicationis dies obſervatur: item parochiis eccleſiarum ubi propria feſtivitas Sancti celebratur, &c.* The rubrick of this law is, *De temporibus, & diebus pacis regis*, intimating term-time, and here in the text the vacations are called *Dies pacis Dei &* Sect. 2. *ſanctæ eccleſiæ*, as I ſaid in the beginning. But *pax Dei, pax Eccleſiæ, & pax Regis*, in other Laws of *Edward* the *Confeſſor*, and elſewhere, have *other* ſignifications, alſo more particular; *hora nona* is here (as in *all* authors of that time) intended for *three* of the *clock* in the afternoon, being the ninth hour of the *artificial* day, wherein the Saxons, as other nations of *Europe*, and our anceſtors of much later time, followed the *Judaical* computation, perhaps till the invention and uſe of clocks gave a *juſt* occaſion to alter it, for that they could not daily tarry for the unequal hours.

The Conſtitution of WILLIAM *the* CONQUEROR.

This Conſtitution of *Edward* the *Confeſſor* was, amongſt his other laws, confirmed by *William* the *Conqueror*, as not In Hen. II. page 600. only *Hoveden*, and thoſe ancient authors teſtify, but by the Legum Anglo Saxon, page 137. *Decree* of the *Conqueror himſelf*, in theſe words, *Hoc quoque præcipio ut omnes habeant & teneant leges* Edwardi *in omnibus rebus, adauctis his quæ conſtituimus ad utilitatem Anglorum.* And in thoſe *Auctions* nothing is added, altered, or ſpoken, concerning any part of that conſtitution; neither is it *likely* that the *Conqueror* did *much* innovate the courſe of our term or law days, ſeeing he held them in his own dutchy of *Normandy*, not far differing from the ſame manner, having received the cuſtoms of *that* his country from this of ours, by the hand of *Edward* the *Confeſſor*, as, in the beginning of their old *Cuſtomary*, themſelves do acknowledge. The words touching their law days or *Tryals* are theſe, under

the

the title, *De temporibus quibus leges non debent fieri*; *Notandum autem eſt quod quædam ſunt tempora in quibus leges non debent fieri, nec ſimplices, nec apertæ, viz. omnia tempora in quibus matrimonia non poſſunt celebrari*; *eccleſia autem legibus apparentibus omnes dies feſtivos perhibet & defendit, viz. ab hora nona die Jovis, uſque ad ortum ſolis die Lunæ ſequenti, & omnes dies ſolennes novem lectionum & ſolennium jejuniorum, & dedicationis eccleſiæ in qua duellum eſt deducendum.* This law doth *generally* inhibit all judicial proceedings during the time wherein *Marriage* is forbidden, and *particularly* all trials by battle (which the *French* and our *Glanvill* call *Leges apparentes*, alias *apparabiles*, vulgarly *Loix Apparisans*) during the other times therein mentioned; and it is to be *noted*, that the emperor *Frederick* the *Second* in his *Neapolitan Conſtitutions* includeth the trials by *Ordeal* under *Leges parabiles*. But touching the times wherein marriage was forbidden, it agreed for the moſt part with the vacations preſcribed by *Edward* the *Confeſſor*, eſpecially touching the beginning of them. Of *Dies novem lectionum* we ſhall find occaſion to ſpeak hereafter.

Cuſtom. cap. 80.

Lib. 4. c. 1.

Lib. 14. c. 2. Tit. 31.

What done by William Rufus, Henry I. *King Stephen, and Henry* II.

As for *William Rufus*, we read that he pulled many *lands* from the church, but not that he abridged the *vacation* times aſſigned to it.

Henry the Iſt. upon view of former conſtitutions, compoſed this law under the title, *De obſervatione legis faciendi, viz. Ab Adventu Domini uſque ad Octabas Epiphaniæ, & a Septuageſima uſque ad 15 dies poſt Paſcham, & feſtis diebus, & Quatuor Temporum, & diebus Quadrageſimalibus, & aliis legitimis jejuniis, in diebus Veneris, & Vigiliis ſanctorum apoſtolorum non eſt tempus leges faciendi, vel jusjurandum (niſi primo fidelitate Domini, vel concordia) vel bellum, vel ferri, vel aquæ, vel leges exactiones tractari, ſed ſit in omnibus vera pax, beata charitas, ad honorem omnipotentis Dei, &c.*

Alii legunt. ſingulorum. Niſi (*primo*) al. pro. Al. examinationis.

The copy of theſe laws is much corrupted, and it appeareth by *Florence Wigorn*'s *Continuer* that the *Londoners* refuſed

Anno Dom. 1142.

refuſed them, and put *Maud* the empreſs to an ignominious flight, when ſhe preſſed the *obſervation* of them; but in *this* particular branch there is nothing not agreeable to ſome former conſtitution. The word *Bellum* here ſignifieth *Combats*, which among our Saxons are not ſpoken of, and by thoſe of *Ferri vel Aquæ*, are meant *Ordeal*.

Hiſt Nov. lib. 1. page 179.

King *Stephen* by his charter recited at *Malmeſbury*, confirmed and eſtabliſhed by a generality, *Bonas leges & antiquas, & juſtas conſuetudines*.

In Hen. II. page 600.

Henry the ſecond *expreſly* ratified the laws of *Edward* the *Confeſſor*, and *William* the *Conqueror*, as *Hoveden* telleth us, ſaying, *that he did it by the advice of* Ranulph Glanvill *then newly made chief juſtice of England*; which ſeemeth to be true, for that *Glanvill* doth accordingly make ſome of his *Writs* returnable *in Octabi*, or *clauſo Paſchæ*, where the laws of *Edward* the confeſſor appoint the end of *Lent* vacation; and *Gervaſcius Tilburienſis* alſo mentioneth the ſame return.

Lib. 2. cap. 11.

Dial. de Scacc.

The Terms laid out according to theſe ancient Laws.

To lay out now the bounds of the terms according to theſe canons and conſtitutions, eſpecially that *ancient* law of *Edward* the *Confeſſor*; it thus appeareth, viz.

Hilary-term.

Hilary term began then certainly at *Octabis Epiphaniæ*, that is, the thirteenth day of *January*, *ſeven* days before the firſt return is now, and *nine* days before our term beginneth, and ended at the Saturday next before *Septuageſſima*, which being moveable, made this term longer ſome years than in others. *Florentinus Wigornienſis* and *Walſingham* in his *Hypodigma Neuſtriæ* ſaith,—*Anno* 1096, *in Octabis Epiphaniæ apud Sariſburiam, rex* Gulielmus Rufus *tenuit conſilium in quo juſſit* Gulielmo de Anco *in duello victi oculos eruere, & teſticulos* abſcindere & dapiferum *illius* Gulielmum *de* Alderi, *filium amitæ illius ſuſpendi, &c.* proceeding alſo judicially againſt others. Though *Walſingham* calleth this aſſembly *Conſilium* with an *s*, and Wigornienſis Concilium with a *c*, (the word term perhaps not being in uſe in the days of *William Rufus*) yet it may ſeem to be no other than

Page 441. lin. 18.

than an aſſembly of the *Barons* in the king's court of ſtate (which was then the place of juſtice) to proceed judicially againſt theſe offenders; for the barons of the land were at that time the judges of all cauſes, which we call *Pleas of the Crown*, and of all other belonging to the *Court of the King*; ſo that the proceedings being *Legal* and not *Parliamentary*, it appeareth that it was then no vacation, and that the term was begun at *Octabis Epiphaniæ*; whereby it is the likelier alſo that it ended at *Septuageſſima*, leſt beginning it, as we *now* do, ſome years might happen to have no *Hilary* term at all, as ſhall anon appear. And this our ancient uſe of ending the term at *Septuageſſima* is ſome inducement to think the council of *Ertford* to be depraved, and that the word there *Quinquageſſima* ſhould be *Septuageſſima*, as the gloſs there reporteth it to be in ſome other place; and as well *Gratian* miſtakes this, as he hath done the council *itſelf*, attributing it to *Epheſus*, a city of *Ionia*, inſtead of *Ertford*, a town of *Germany*; where *Burchard* before him, and *Binius* ſince hath placed it.

It comes here to my mind, what I have heard an old *Chequerman* many years ago report, that *this* term and *Trinity*-term were in ancient time either *no* terms at all, or but as *reliques* of *Michaelmas* and *Eaſter*-term, rather than juſt terms of themſelves: ſome courſes of the *Chequer* yet incline to it. And we were both of a mind, that want of buſineſs (which no doubt in thoſe days was *very* little) by reaſon ſuits were then for the moſt part determined in inferior courts, was the cauſe of it. But I ſince obſerve another cauſe, viz. that *Septuageſſima* or Church-time one while trode ſo near upon the heels of *Octabis Epiphaniæ* (I mean came ſo ſoon after it) that it left not a whole week for *Hilary*-term; and again, another while *Trinity-Sunday* fell out ſo *late* in the year, that the common neceſſity of hay-ſeed and harveſt, made that time very *little* and unfrequented.

For inaſmuch as Eaſter-term (which is the *Clavis*, as well to ſhut up *Hilary*-term, as to open *Trinity*-term) may, according to the general council of Nice holden

in the year 922, fall upon *any* day between the 22d of October excluſively, which then was the *Æquinoctium*, and the 25th of April incluſively (as the *fartheſt* day, that the Sunday following the vernal full-moon can happen upon); *Septuageſſima* may *ſometimes* be upon the 18th of January, and then they could not in ancient time have above four days term, and we at this day *no* term at all, becauſe we begin it not till the 23d of January, which may be *ſix* days after *Septuageſſima*, and within the time of church-vacation; but what *Hilary*-term hath now loſt from the *beginning* of it, it hath gained at the latter *end* of *Trinity*-term. And I ſhall ſpeak more of this by and by.

Eaſter-Term.

Eaſter-term, which now beginneth two days after *Quindena Paſchæ*, began then, as the law of *Edward* the *Confeſſor* appointed it, at Octab. This is verified by *Glanvill*, who maketh one of his writs returnable thus;——*Summoneo per bonos ſummonitores quatuor legales milites de vicineto de Stock, quod ſint ad Clauſum Paſchæ coram me vel juſticiariis meis apud Weſtmonaſterium ad eligendum ſupra ſacramentum ſuum duodecim legales milites.* But, as it began then nine days ſooner than it *now* doth, ſo it ended ſix or ſeven days ſooner, viz. before the *Vigil* of Aſcenſion, which I take to be the meaning of the law of *Edward* the *Confeſſor*, appointing the time from the Aſcenſion (incluſive) to the *Octaves* of Pentecoſt, with Aſcenſion-eve, to be *Dies pacis Eccleſiæ*, and Vacation.

Trinity-Term.

Trinity-term therefore in thoſe days began as it now doth (in reſpect of the return) at *Octab. Pentecoſtes*, which being always the day after *Trinity* Sunday, is now by the *Stat.* of 32 of Hen. VIII. appointed to be called *Craſtino Trinitatis*. But it ſeemeth that the *Stat.* 51 of Hen. III. changed the beginning of this term from *Craſtino Trinitatis* to *Octab. Trinitatis*, and that therefore the *Stat.* of Hen. VIII. did no more in this point than reduce it to the former original. As touching

touching the *end* of this term, it seemeth also that the said *Stat.* of 51 Hen. III. assigned the same to be within two or three days after *Quindena Sancti Johannis* (which is about the *twelfth* of July) for that statute nameth no *return* after.

But, for ought that hindereth by the canons, it is *tanquam Terminus sine Termino:* for there was no set *Canon* or ecclesiastical *Law* (that I can find) to abridge the continuance thereof till *Michaelmas*-term, unless the seven days next before Saint *John Baptist* were (according to the canon of *Ertford*) used as days of intermission, when they fell after the *Octaves* of Pentecost, as commonly they do, though in the year 1614 four of them fell within them; and except the Ember-days next after *Holy-rood*; for, *Jejunia Quatuor Temporum*, as well by the laws of *Canutus* and *Edward* the *Confessor*, as by all other almost before recited, are either expresly or implicitly exempted from the days of law. But when *Trinity-Sunday* fell near the feast of Saint *John Baptist*, then was the first part of this term so thrust up between those days of the *Church*, that it was very short; and the latter part being always very late, did so hinder hay-seed and harvest following, that either the course of it must be shortened, or it must still usurp upon the time allotted by nature to collect the *Fruits* of the *Earth*.

For, as *Religion* closed the courts of law in *other* parts of the year, so now doth publick *necessity* stop the progress of them; following the constitution of *Theodosius*, thus decreeing. *Omnes dies jubemus esse juridicos. Illos tantum manere feriarum dies fas erit, quos geminis mensibus ad requiem laboris indulgentior annus excepit; æstivos fervoribus mitigandis, & autumnos fructibus discerpendis*; this is also confirmed in the C. ——————and in *Gratian* with the *glosses* upon them to which I leave you, but is of old thus expressed by *Statius*, as if it were *ex jure gentium.*

Cod. lib. 3. tit. 12. de Feriis cap. 7.

Tit. de Feriis cap. 5. Cau. 15. quæst. 4.

Silvarum lib. 4. carm. 4. quod inscribitur. Ad Victorium Marcellum.

Certe jam Latiæ non miscent jurgia leges,
Et pacem piger annus habet, messesque reversæ
Dimisere forum; nec jam tibi turba reorum
Vestibulo, querulique rogant exire clientes.

The

The Latian laws do no man now moleſt,
But grant this weary ſeaſon peace and reſt;
The courts are ſtopt when harveſt comes about,
The plaintiff or defendant ſtirs not out.

So the *Longobards* (our brethern as touching Saxon original) appointed, for their Vintage, a *particular* Vacation of 30 *days*, which *Paulus Diaconus* doth thus mention; *Proficiſcentes autem eo ad villam, ut juxta ritum imperialem triginta:* whereby it appeareth that this time was not only a time of vacation in thoſe ancient days, but alſo of feaſting and merriment, for receiving the fruits of the earth, as at *Nabal*'s and *Abſalom*'s ſheep-ſhearing, and in divers parts of *England* at this day. So the *Normans*, whoſe terms were *once* not ſo much different from ours, might not hold their *Aſſizes*, or times of law, but after *Eaſter* and *Harveſt* (that is, after the times of holy church and publick neceſſity) as appeareth by their *Cuſtomary*; and foraſmuch as the * *Swainmote Courts* are by the ancient foreſt-laws appointed to be kept fifteen days *before* Michaelmas; it ſeemeth to be intended that harveſt was *then* done, or that in foreſts little or no *corn* was uſed to be ſown.

1 Sam. 25. 4. 2 Sam. 13. 23.

But it is to be remembered, that this vacation by reaſon of harveſt, hay-ſeed, vintage, &c. was not of ſo much ſolemnity as thoſe in the *other* parts of the year, and therefore called of the civilians, *Dies feriati minus ſolennes*; becauſe they were not dedicated *Divino cultui*, but *Humanæ neceſſitati:* therefore, though law buſineſs was prohibited on theſe days to give *eaſe* and *freedom* unto *Suitors* whilſt they attended on the ſtore-houſe of the commonwealth, yet was it not otherwiſe, than that by *conſent* of parties they might proceed in this vacation; whereof ſee the *Decreta Gregorii.*

Lib. 2. chap. 21.

* Swainmote or Swanimote (*from the Saxon* ꝑpanꝛ. i. e. *a country clown or freeholder, and* mot *or* ꝛemot conventus) *is a Court of Freeholders within the foreſt. See* 3 Henry VIII. chap. 18.

Of

Of Michaelmas Term according to the ancient Conſtitution.

Michaelmas-term (as the canons and laws aforeſaid leave it) was more uncertain for the *beginning* than for the *end*. It appeareth by a fine taken at *Norwich* 18th Henry III. that the term was *then* holden there, and began within the *Octaves* of Saint *Michael*; for the note of it is, *Hæc eſt finalis concordia facta in curia Domini regis apud* Norwicum, *die* Martis *proximo poſt feſtum ſancti* Michaelis, *anno regni regis* Henrici *filii regis* Johannis 18 *coram* Tho. *de* Mulet, Rob. *de* Lexint, Olivero, &c. I obſerve that the Tueſday next after St. Michael can (at the fartheſt) be but the ſeventh day after it, and yet it *muſt* be a day within the Octaves; whereas the Term * *now* is not till the third day after the *Octaves*. But Gervaſius Tilburienſis, who lived in the days of Henry II. hath a writ in theſe words:——*N. rex Anglorum* [illi vel illi] *vicecomiti ſalutem. Vide, ſicut teipſum & omnia tua diligis, ut ſis ad Scaccarium* [ibi vel ibi in craſtino Sancti *Michaelis*, vel in craſtino Clauſi *Paſchæ*] *& habeas tecum quicquid debes de veteri firma & nova, & nominatim hæc debita ſubſcript. viz. &c.* By which it appeareth that the term in the *Exchequer*, as touching *Sheriffs* and *Accomptants*, and conſequently in the *other* parts, began *then* as now it doth, ſaving that the Statute *de Scaccario* 51 *Henry* III. hath ſince appointed, *That Sheriffs and Accomptants ſhall come to the Exchequer the Monday after the feaſt of St.* Michael, *and the Monday after the Utas of Eaſter*. So that this time, being neither *ferial* nor belonging to the *Church*, may *juſtly* be allotted to Term affairs, if the *Octaves* of St. *Michael* have no privilege: more of which hereafter.

Dial. lib. 2. cap. 3.

Utas, i. e. Octava, the eighth day after any term or feaſt.

The *end* is *certainly* prefixed by the canons and laws aforeſaid, that it may *not* extend into Advent; and it holdeth ſtill at that *mark*, ſaving that becauſe Advent Sunday is moveable, according to the Dominical Letter, and may fall upon *any* day between the 26th of *November* and the 4th of *December*, therefore the 28th of November (as a middle

* Before the abbreviation by 16 Car. I. chap. 6.

period

period by reaſon of the Feaſt and Eve of St. *Andrew*) hath been appointed to it. Howbeit when Advent-ſunday falleth on the 27th of *November*, as *ſometimes* it doth, then is the *laſt* day of the term (contrary to the canons and former conſtitutions) held in Advent, as it after ſhall more largely appear.

The latter Conſtitutions of the Terms.

To leave obſcurity and come nearer the light, it ſeemeth by the ſtatutes of 51 Henry III. called *Dies communes in banco*, that the terms did then either begin and end as they do now, or that thoſe ſtatutes did lay them out, and that the *Statute of* 36 *Edward* III. *cap.* 12. confirmed that uſe; for the returns there mentioned are neither *more* nor *fewer*, than at this day.

Anno 1614. in which year this tract was written.

How Trinity-term was altered and ſhortened.

Trinity-term was altered and ſhortened by the *Statute* of 32 *Henry* VIII. chap. 21. which hath ordained it *quoad ſeſſionem*, to begin for ever the Friday after *Corpus-Chriſti-Day*, and to continue 19 days; whereas in *elder* times it began two or three days *ſooner*; ſo that *Corpus-Chriſti-Day* being a *moveable* feaſt, this term cannot hold any *certain* ſtation in the year; and therefore in the year 1614 it began on St. *John Baptiſt*'s day, and the year before it *ended* on his *Eve*. Hereupon, though by all the canons of the church and former laws, the feaſt of St. *John Baptiſt* was a *ſolemn* day, and *exempt* from legal proceedings in courts of juſtice; yet it is no vacation-day, when *Corpus Chriſti* falleth (as it did that year) the very day *before* it: becauſe the ſtatute hath appointed the term to begin the Friday next after *Corpus-Chriſti-Day*, which in the ſaid year 1614 was the day *next* before St. *John Baptiſt*, and ſo the term did of neceſſity begin on St. *John Baptiſt*'s-*day*. This deceived all the prognoſticators, who counting St. John Baptiſt for a *grand* day, and no day in court, appointed the term in their almanacks to begin the day *after*, and conſequently to hold a day longer; ſo deceiving many by that their error.

But

But the aforeſaid *ſtatute* of 32 Henry VIII. changed the whole frame of this term; for it made it begin ſooner by a return, *viz. Craſtino ſanctæ Trinitatis*, and thereby brought *Octabis Trinitatis*, which before was the *firſt* return, to be the *ſecond*, and *Quindena Trinitatis*, which before was the *ſecond*, now to be the *third*; and inſtead of the three *other* returns of *Craſtino Octabis*, and *Quindena Sancti Johannis*, it appointed that which before was *no* return, but now the *fourth* and *laſt*, called *Tres Trinitatis*.

The *altering* and *abbreviation* of this term is declared by the preamble of the ſtatute to have riſen out of *two* cauſes, one for *health* in diſmiſſing the concourſe of people, the other for *wealth* that the ſubject might attend his *harveſt*, and the gathering in the *fruits* of the *earth*. But there ſeemed to be a *third* alſo not mentioned in the ſtatute, and that is, the uncertain *ſtation*, *length*, and *returns* of the firſt part of this term, which, like an *Eccentrick*, was one year *near* to St. *John Baptiſt*, another year far *removed* from it; thereby making the term not only *various*, but one year *longer*, and another *ſhorter*, according as *Trinity* Sunday (being the *Clavis* to it) fell nearer or farther off from Saint *John Baptiſt*: for if it fell *betimes* in the year, then was this term very long, and the two *firſt* returns of *Octabis* and *Quindena Trinitatis* might be paſt and gone a fortnight and more, before *Craſtino Sancti Johannis* could come in; and if it fell late (as ſome years it did) then would *Craſtino Sancti Johannis* be come and paſt, before *Octabis Trinitatis* were gone out: ſo that many times one or two of the firſt returns of this term (for ought that I can ſee) muſt in thoſe days *needs* be loſt.

How Michaelmas Term was abbreviated by Act of Parliament, 16 Car. I. chap. vi.

The *laſt* place our Statute-book affords upon this *ſubject* of the limits and extent of the terms, is the *Stat.* 16 Car. I. *cap.* vi. intituled, An act concerning the limitation and abbreviation of *Michaelmas Term*. For whereas by former ſtatutes it doth appear, that *Michaelmas*-term did begin

in *Octabis Sanctæ Michaelis*; *that* ſtatute appoints, that the *firſt* return in this term ſhall ever hereafter be *a die Sancti Michaelis in tres ſeptimanas*; ſo cutting off no leſs than *two* returns from the *ancient* beginning of this term, viz. *Octabis Sancti Michaelis, & a die Sancti Michaelis in quindecim dies*, and conſequently making the beginning of it fall a fortnight *later* than before: wherefore the *firſt* day in this term will *always* be the 23d *day* of *October*, unleſs it happen to be Sunday, for then it muſt be deferred till the day *following*, upon which account we find it accordingly placed on the 24th for the year 1681. *This* is all the alteration that ſtatute mentions, and therefore for the *end* of *Michaelmas*-term, I refer the reader to what our author has ſaid already in the 15th *chapter*. It may not be amiſs, in purſuit of our author's method, to ſet down the *motives* of making this abbreviation, as we find them reckoned up in the *Preamble* to that ſtatute. There we find, that the old *beginning* of *Michaelmas Term, was generally found to be very inconvenient to his majeſty's ſubjects, both nobles and others:* 1ſt, *For the keeping of quarter ſeſſions next after the feaſt* of Saint Michael *the archangel:* 2dly, *For the keeping their leets, law-days, and court barons:* 3dly, *For the ſowing of Land with winter corn, the ſame being the chief time of all the year for doing it:* 4thly, *For the diſpoſing and ſetting in order of all their Winter husbandry, and buſineſs:* 5thly, *For the receiving and paying of rents:* 6thly, *Becauſe in many parts of this kingdom, eſpecially the moſt northern, harveſt is ſeldom or never inned till three weeks after the ſaid feaſt. All which affairs they could before by no means attend, in regard of the neceſſity of their coming to the ſaid term, ſo ſpeedily after the feaſt* of Saint Michael *the archangel, to appear upon juries, and to follow their cauſes and ſuits in the Law.*

Other Conſiderations touching Term-time.

Having *thus* laid out the frame of the *Terms*, both according to the *ancient* and *modern* conſtitutions, it remaineth that we ſpeak ſomething of *other* points properly incident

incident to this part of our diviſion touching *Term-time*, viz.

I. *Why* the courts ſit not in the *afternoons*.

II. *Why* not upon ſome *whole* days, as on *grand-days*, *double feaſts*, and other *exempted* days, and the *reaſon* of them.

III. *Why ſome* law-buſineſs may be done upon ſome days *exempted*.

IV. *Why* the *end* of *Michaelmas-term* is ſometimes held in *Advent*, and of *Hilary-term* in *Septuageſſima*, *Sexageſſima*, and *Quinquageſſima*.

V. *Why* the *aſſizes* are held in *Lent*, and at times generally *prohibited* by the church.

VI. Of *Returns*.

VII. Of the *Quarta dies poſt*.

VIII. *Why* I have cited ſo much *Canon*, *Civil*, *Feodal*, and *Foreign Laws* in this diſcourſe, with an incurſion into the *original* of our laws.

CHAP. I.

Why the High Courts ſit not in the Afternoons.

IT is *now* to be conſidered why the High Courts of juſtice ſit not in the *Afternoons*: for, it is ſaid in ſcripture, that *Moſes* judged the *Iſraelites* from *morning* to *evening*. And the *Romans* uſed the *afternoon* as well as the forenoon; yea, many times the afternoon, and not the forenoon, as upon the days called *Endoterciſi*, or *Interciſi*, whereof the forenoon was *Nefaſtus*, or Vacation; and the afternoon *Faſtus* or Law-day, as we ſhewed in the beginning. And the *Civilians* following that law, do ſo continue them amongſt us in their terms at *this* day. But our anceſtors, and other the northern nations, being more prone to *diſtemper* and exceſs of *diet* (as the canon-law noteth of them) uſed the forenoon only, leſt *repletion* ſhould bring upon them *drowſineſs* and *oppreſſion of ſpirits* according to that of *Saint Jerome*, *Pinguis venter non gignit mentem tenuem*. To confeſs the truth our *Saxons* (as appeareth Exod. 18. 14.

Hiſt. lib. 6. 1. Chap. 10. 13. by *Huntingdon*) were unmeaſurably given to drunkenneſs; and it is ſaid in *Eccleſiaſtes*, *Væ terræ, cujus principes mane comedunt*. Therefore, to avoid the inconvenience depending hereon, the council of *Nice* ordained, that *judices non niſi jejuni judicia decernant*. And, in the council of Salegunſtad it was afterwards decreed A. D. 1023, *ut lectio Nicæni concilii recitetur*, which being done in the words aforeſaid, the ſame was likewiſe *there* confirmed. According to this in the laws of *Carolus magnus* the emperor, it is ordained L——lib. 2. *ut judices jejuni cauſas audiant & diſcernant:* and again in the *Capitulars Caroli & Lodovici, ne placitum, Comes habeat niſi jejunus*. Where the word *Comes* according to the phraſe of that time is uſed for *Judex*, as elſewhere we have it declared to the ſame effect in the *Capitular ad legem Salicam*. And out of theſe, and ſuch other Conſtitutions, ariſeth the *rule* of the Canon law, that *Quæ a prandio fiunt conſtitutiones inter decreta non referuntur*; yet I find that cauſes might be heard and judged in the *Afternoon*; for, in *Capitulars*, lib. 2.——33, and again, *lib.* 4. *cau.* 16. it is ſaid, *Cauſæ viduarum, pupillorum, & pauperum, audiantur & definiantur ante meridiem, regis vero, & potentiorum poſt meridiem*. This, though it may ſeem contradictory to the conſtitution aforeſaid, yet I conceive them to be *thus* reconcileable: that the judges (ſitting then but ſeldom) *continued* their courts both forenoon and afternoon, from morning till evening, without dinner or intermiſſion, *as* at this day they *may*, and often *do*, upon *great* cauſes; though being riſen and dining, they might not meet again; yet might they not ſit at *night*, or uſe *Candlelight*, *Quod de nocte non eſt honeſtum judicium exercere*. And from theſe ancient rites of the *Church* and *Empire* is our law derived, which prohibited our jurors, being *Judices de facto*, to have *meat*, *drink*, *fire*, or *candlelight*, till they *be agreed* of their verdict.

Tit. Lib. cau. *Archæd.* verb. comes. cap. 1. 15. Ft alia cap. *Car.* 6. 4.

It may be here demanded how it cometh to paſs, that our judges after dinner do take *Aſſizes* and *Niſi prius* in the Guildhall of *London*, and in their circuits; I have yet no other anſwer, but that ancient inſtitutions are diſcontinued often

often by ſome cuſtom grating in upon them, and changed often by ſome later conſtitution, of which kind the inſtances aforeſaid ſeem to be. For *aſſizes* were ordained *many* ages after by *Henry* the Second, as appeareth by the charter of *Beverly*, *Glanvill*, and *Radulphus*; *Niger* and *Niſi prius*, by ‖ Edward the Firſt, in the ſtatutes of *Weſtminſter* 2; though I ſee not but in taking of them, the ancient courſe might have been continued, if haſte would ſuffer it.

Why they ſit not at all ſome Days.

Though there be many Days in the Terms, which by ancient conſtitutions before recited are *exempted* from law-buſineſs, as thoſe of the *Apoſtles*, &c. and that the § ſtatute of Edw. VI. appointed many of them to be kept holy-days as dedicated, not unto *ſaints*, but unto *divine worſhip*, which we alſo at this day retain as holy-days; yet do not the high courts forbear ſitting in any of them, ſaving on the feaſt of the *Purification*, *the Aſcenſion*, *St. John the Baptiſt*, *All Saints*, and the day after (though not a feaſt) called *All Souls*. When the others loſt their privilege, and came to be term days, I cannot find; it ſufficeth that *cuſtom* hath repealed them by confeſſion of the canoniſts. Yet it ſeemeth to me there is no proviſion made for it in the conſtitutions of our Church under *Iſleep* archbiſhop of *Canterbury*, in the time of *Edward* III. For though many ancient laws and the decretals of *Gregory* the 9th, had ordained *Judiciale, Strepitum diebus conquieſcere feriatis*; yet in a ſynod then holden, wherein are *all* the holy days appointed and particularly recited *no* reſtraints of judicature or *Forenſis ſtrepitus* is impoſed, but a *ceſſation* only *ab univerſis ſervilibus operibus etiam reipublice utilibus*; which, though it be in the phraſe God *himſelf* uſeth touching many *great* feaſts, viz. * *omne ſervile opus non facietis in iis*; yet it is not in *that* when he inſtituteth the *ſeventh* day to be the Sabbath.

‖ 13 *Edw.* I. cap. 30. § An. 5 and 6 *Edw.* VI. cap. 3. * *Lev.* xxiii. 21, 25.

Non

† *Non facies omne opus in eo* [without ſervile] thou ſhalt do no *manner* of work therein. Now the Act of *Judicature*, and of hearing and determining *controverſies* is not *opus ſervile*, but *honoratum & plane Regium*, and ſo not within the prohibition of *this* our canon, which being the *latter* ſeemeth to qualify the *former*. Yea, the canoniſts and caſuiſts themſelves not only *expound opus ſervile* of *corporeal* and *mechanical* labour; but admit 26 *ſeveral* caſes, where (even in that very kind) diſpenſation lieth againſt the canons, and by *much* more reaſon than, with this in queſtion. It may be ſaid that this canon conſequently giveth liberty to hold plea and courts upon their feſtivals in the vacations: I confeſs that *ſo* it ſeemeth; but this canon hath no power to alter the *bounds* and *courſe* of the terms, which *before* were ſettled by the Statutes of the Land; ſo that in *that* point it prevaileth not. Why? But there ariſeth another Queſtion, how it comes to paſs that the Courts ſit in *Eaſter*-term upon the *Rogation days*, it being forbidden by the council of *Medard*, and by the intention of divers *other* conſtitutions? It ſeemeth that it *never* was ſo uſed in *England*, or at leaſt not for *many* ages, eſpecially ſince *Gregory* the ninth; inſomuch that among the days wherein he prohibiteth *forenſem ſtrepitum*, clamorous pleading, &c. he nameth them not. And though he *did*, the gloſſographers ſay, that a nation may by *cuſtom* erect a feaſt that is not commanded by the *canons* of the church. ‡ *Et eodem modo poſſet ex conſuetudine introduci, quod aliquæ quæ ſunt de præcepto non eſſent de præcepto, ſicut de tribus diebus rogationum*, &c. To be ſhort, I find no ſuch privilege for them in *our* courts, though we admit them *other* church rites and ceremonies.

Why on ſome feſtivals, and not on others.

We muſt now ſhew (if we can) why the Courts ſitting upon ſo many ferial and holy-days, do forbear to ſit upon *ſome* others, which before I mentioned; the *Purification*, *Aſcenſion*, *St. John Baptiſt*, *All Saints*, &c. For in the ſynod under *Iſleep* before-mentioned, *no* prerogative is given *to them* above the *reſt* that fall in the *terms*, as, namely, *St.*

† Ex. xx. 10, 11. Lev. xxiii. 3. ‡ *Fabien.* Feriæ Sect. 10.

Mark

Mark and *St. Philip* and *Jacob*, when they do fall in *Eaſter*-term, *St. Peter* in *Trinity*-term, St. *Luke* (before the late abbreviation by 16 Car. I.) *did* fall, and St. *Simon* and *Jude* doth *always* fall in *Michaelmas*-term. It may be ſaid, that although the ſynod did prohibit only *opera ſervilia* to be done on feſtival days, as the offence moſt in uſe at *that* time, yet did it not give licence to do *any* Act that was *formerly* prohibited by any *law* or *laudable cuſtom*. And therefore if by *colour* thereof, or any former uſe (which is like enough) the courts did ſit on leſſer feſtivals, yet they *never* did it on the *greater*, among which (*majoris cautelæ gratia*) thoſe *opera ſervilia* are there alſo prohibited to be done on *Eaſter-day*, *Pentecoſt*, and the *Sunday* itſelf.

The differences of feſtivals.

Let us then ſee *which* are the greater feaſts, and by *what* merit they obtain their privilege that the Courts of juſtice ſit not on them. As for *Sunday* we ſhall not need to ſpeak of it, being canonized by *God* himſelf. As for *Eaſter* and *Whitſunday* we ſhall not need to ſpeak of them neither, becauſe they fall not in the terms: yet I find a *Parliament* held, at leaſt *began* on *Whitſunday*. But touching feaſts in general, it is to be underſtood, that the *canoniſts*, and ſuch as write * *de divinis officiis*, divide into two ſorts, viz. *Feſta in totum duplicia & ſimpliciter duplicia*; and they call them *duplicia* or double feaſts, for that *all* or ſome *parts* of the ſervice on thoſe days were begun *voce duplici*, that is, by *two* ſinging-men; whereas on other days all was done by *one*. Our *cathedral* churches do *yet* obſerve it: and I mean not to ſtay upon it, for you may ſee in the § *rationale*, which Feaſts were of every of theſe kinds. The *ordinary* apoſtles were of the laſt, and therefore our Courts made *bold* with them: but the *Purification*, *Aſcenſion*, *St. John Baptiſt*, with ſome others, that fall not in the term, were of the *firſt*, and becauſe of this, and ſome *other* prerogatives were alſo called *feſta majora*, *feſta principalia & dies novem lectionum* ordinarily, *double feaſts*, and *grand days*. Mention is made of them in an † ordinance 8 Edw. III. That writs

* Vide *Durandi* lib. vii. cap. 1. n. 31. § *Durand.* lib. 7. cap. 1. † *Raſt.* Excom. 5.

were

were ordained to the Biſhops, to accurſe all and every of the perturbers of the Church, &c. every Sunday and double feaſt, &c. But we muſt *needs* ſhew why they were called *dies novem lectionum*, for *ſo* our old *rituale de Sarum* ſtileth them, and therein lieth their greateſt privilege. After the *Arian* hereſy againſt the Bleſſed Trinity was by the fathers of that time moſt *powerfully* confuted and ſuppreſſed, the church, in memory of that moſt *bleſſed* victory, and the *better* eſtabliſhing of the *Orthodox* faith in that point, did ordain, that upon divers feſtival days in the year a *particular* leſſon touching the *nature* of the Trinity, beſides the other eight, ſhould be read in their ſervice, with rejoicing and thankſgiving to God for ſuppreſſing that hereſy: and for the *greater* ſolemnity, ſome ‡ *biſhop* or the *chiefeſt* clergyman preſent did perform that duty. Thus came theſe days to their ſtiles aforeſaid, and to be honoured with extraordinary *muſick*, *church-ſervice*, *robes*, *apparel*, *feaſting*, &c. with a *particular* exemption from law-trials amongſt the *Normans*, who therefore kept them the more *reſpectfully* here in *England*: *Feſta enim Trinitatis* (ſaith *Belethus*) *digniori cultu ſunt celebranda.*

Grand-days in France. In *France* they have *two* ſorts of *Grand-days*, *both* differing from ours: Firſt, they call them *les grand jours*, wherein an *extraordinary* Seſſions is holden in any circuit, by virtue of the king's commiſſion directed to certain judges of parliament: Secondly, thoſe in which the *Peers* of *France* hold once or twice a year their courts of *faught juſtice*; all other courts being in the mean time *ſilent*. See touching this their *loyſcean de Seigniors*.

Grand-days in England. To come back to *England*, and our own *Grand-days*, I ſee ſome *difference* in accounting of them: *Durandus*, in his *firſt* chapter and *ſeventh* book reckoneth the *Purification*, *Aſcenſion*, and *St. John Baptiſt* to be *Grand-days*, not mentioning *All Saints*; but both he, in his 34th chapter, and *Belethus* in his . . . . . do call it *feſtum maximum*, & *generale*, being not only the feaſt of the *apoſtles* and

‡ *Belethus* Explicat. cap. 158.

martyrs

martyrs but of the *Trinity*, *angels* and *confeſſors*, as *Durandus* termeth it. And that *honour* and *duty*. *Quod in ſingulis valet, potentius valebit in conjunctis.* As for the feaſt of All Souls, neither *Durandus* nor *Belethus*, nor any ancient of thoſe times (for they lived above 400 years ſince) do record it for a feſtival. But my countryman *Walſingham*, the Monk of *St. Albans*, ſaith, that *Simon* archbiſhop of *Canterbury* in the year 1328, at a provincial council holden at *London*, did ordain, * *Quod die Paraſceve & in commemoratione omnium animarum ab omni ſervili opere ceſſaretur.* Surely he miſtook it; for neither is it *ſo* mentioned in *Lindewood*, reciting that canon, nor in the *ancient* copy of the council itſelf, where the *two* feaſts canonized by him are the *Paraſceve*, and the *conception of the Bleſſed Virgin*; yet doubtleſs, whenſoever it was inſtituted it was a *great feaſt* with *us*, though no where elſe. For the old *Primer Eboracenſis Eccleſiæ* doth *not* only ſet it down in the calendar for a *double* feaſt; but appointeth for it the *whole* ſervice with the *nine* leſſons; for it is as a feaſt of the *Trinity*. And though neither the *ſtatute* of *Edward* the Sixth, nor our *church* at this day doth receive it; yet being formerly a vacation day (as it ſeemeth) our judges *ſtill* forbear to ſit upon it, and have not hitherto made it a day in court, though deprived of feſtival *rites*, and therefore neither graced with *robes* nor *feaſting*.

The feaſt of St. Peter and St. Paul.

The feaſt alſo of St. *Peter* and *Paul* on the 29th of *June* was a *double* feaſt, yet it is now become ſingle, and our judges ſit upon it. I confeſs I have not found the reaſon, unleſs that by *canonizing* St. *Paul*, and ſo leaving St. *Peter* ſingle, we allow him *no* prerogative above the *other* apoſtles, leſt it ſhould give colour for his *primacy*; for to St. *Paul*, as one born *out* of time, we allow *no* feſtival either in the *ſtatute* of *Edward* the Sixth, or in the *almanacks* and *calendars* of our *church*. And why St. *Peter* hath it not is the more obſervable, for that *he* not only is deprived of the ancient dignity of his *apoſtleſhip*, *contrary* to the canons (as

* *Tho. Walſingham*, Hiſt. Angl. page 129.

the other are) but of the privilege given him in that place by pope *Nicholas* the Second in a *bull* to *Edward* the *Confeſſor*, as being *patron* of the *paroch* and *dedication* of *Weſtminſter*, *where* the terms are kept, and *where* by right thereof *this* day was alſo privileged from court buſineſs. *Other* feſtivals I enquire not after, as of St. *Dunſtan* and the reſt that ſtand rubricate in *old* calendars, they being abrogated by old *canons* of our own church, or the *ſtatute* of Edward the Sixth, whereof I muſt note by the way, that I find it repealed by queen *Mary*, but not revived by queen *Elizabeth* or *ſince*. It ſeemeth that the Statute of the fifth and ſixth *Edward* the Sixth, cap. 3. notwithſtanding the repeal of it amongſt a multitude of others by queen *Mary*, *anno* 1. *ſeſſion.* 2. cap. 2. is revived again, though not by queen *Elizabeth*; yet by 1 *Jacobi*, cap. 25. in theſe words: *That an act made in the firſt year of the reign of queen* Mary, *intituled, An Act for the repeal of certain ſtatutes made in the time of king* Edward the Sixth, *ſhall ſtand repealed.*

St. George's day.

I am carried from the brevity I intended; yet *all this* lieth in my way; nor is it *out* of it to ſpeak a word of St. *George's day*, which ſometimes falleth in *Eaſter* Term, and is kept in the court *royal* with great ſolemnity, but not in the court *judicial*. Though he ſtood *before* in the calendar, and was the *Engliſh* patron of *elder* time; yet *H. Chichley*, archbiſhop of *Canterbury*, gave him his *greatneſs* by canonizing his day to be a *double feaſt* and *grand day*, as well among the *clergy* as *laity*; and that both the *one* and the *other* repairing to their churches ſhould celebrate it (as Chriſtmas-day) free from ſervile work, in ardent prayers for ſafety of the *king* and *kingdom*. The *occaſion* of this conſtitution was to excite king *Henry* the Fifth, being upon his expedition for *Normandy*; and this among many holy days was aboliſhed by the *ſtatute* of fifth and ſixth of *Edward* the Sixth. Yet it being the *feſtival* of the *knights* of the *garter*, it was provided in the * ſtatute, *That the knights might*

* Parag. 7.

celebrate

celebrate it on the 22*d*, 23*d*, *and* 24*th of* April. *Other* feaſts there were of this nature, as that of St. *Winifred* on the ſecond of *November*, which is in effect *no* day of *ſitting*, but applied to the pricking of *Sheriffs*. St. Winifred.

Theſe are vaniſhed, and in their room we have one new memorable day of intermitting court and law-buſineſs for a little in the morning, whilſt the judges in their robes go *ſolemnly* to the *great* church at *Weſtminſter* on the fifth of *November* yearly, to give God thanks for our *great* deliverance from the *Powder Treaſon*, and hear a *Sermon* touching it, which done they return to their benches. *This* was inſtituted by act of Parliament 3 *Jacobi*, cap. 1. and it is of the kind of thoſe *ferial* days, which being ordained by the *emperors*, not by the *popes*, are in canon and civil law called *feriati dies repentini*. I will go no farther among the *tedious* ſubtilties of diſtinguiſhing *days*; I have not been *matriculated* in the court of *Rome*; and I confeſs I neither *do* nor *can* explain many *objections* and *contrarieties* that may be gathered in theſe paſſages, ſome *Oedipus* or *Ariadne* muſt help me out. *The fifth of* November.

Why ſome law-buſineſs may be done on days exempted.

In the mean time let us ſee why *ſome* law-buſineſs may be done on days *exempted*, and ſometimes on Sunday *itſelf*, notwithſtanding any thing above-mentioned.

For as in *term* time *ſome* days are exempted from term buſineſs, and ſome *portion* of the day from *ſitting* in courts; ſo in the *vacation* time and days *exempted*, *ſome law* buſineſs may be performed by *expreſs* permiſſion of the canon law, according to that of the * *poet* in the *Georgicks*.

Quippe etiam feſtis quædam exercere diebus
Fas & jura ſinunt.

The ſynod of *Medard* admitteth matters *de pace & concordia*. The laws of *Henry* the Firſt matters of *concord* and doing *fealty* to the *Lord*. The decree of *Gregory* th:

* *Virgil*, Georg. lib. 1. v. 268, &c.

Ninth, in caſes of *neceſſity*, and doing *piety* according to that of * *Proſper*,

Non recto ſervat legalia Sabbata cultu,
Qui pietatis opus credit in his vetitum.

The rule is verified by our *Saviour*'s healing on the Sabbath-day. Out of *theſe* and ſuch *other* authorities of the laws eccleſiaſtical and civil, cited in the *Gloſſes*, the canoniſts have collected *theſe* caſes, wherein judges may proceed legally upon the days *prohibited*, and do the things here next following:

For matters of *peace* and *concord* by reaſon whereof our judges take the acknowlegement of *fines*, *ſtatutes*, *recognizances*, &c upon any day, even the Sabbath itſelf (though it were better *then* to be forborne).

For ſuppreſſing of *traitors*, *thieves*, and notorious *offenders*, which may otherwiſe trouble the *peace* of the commonwealth, and *undo* the kingdom.

For manumiſſion of *bondmen*: A work of *piety*.

For ſaving that which otherwiſe would *periſh*: A work of *neceſſity*.

For doing that, which, time overſlipt, *cannot* be done; as for making *appeals* within the time limited, &c.

For taking the benefit of a witneſs that otherwiſe would be *loſt*, as by *death* or *departure*.

For making the *ſon ſui juris*; as if amongſt us a *lord* ſhould diſcharge a *ward* of *wardſhip*; all which are expreſſed in *theſe* verſes:

Hæc faciunt cauſas feſtis tractare diebus,
Pax ſolus admiſſum, manumiſſio res peritura,
Termina expirans mora feſti abeſſe volentis,
Cumque poteſtatis patriæ jus filius exit.

Or *thus*, according to *Panormitanus*;

Ratione appellationis, pacis, neceſſitatis celeritatis, pietatis, matrimonii, latrocinii & ubicunque in mora promptum eſt periculum.

So likewiſe by conſent of parties upon *dies feriati minus ſolennes*, viz. harveſt, hayſeed, &c. as we have ſaid before; and *divers* others there are. See the † *Gloſſes*.

* Lib. Ep. † Cau. 15. q. 4. Tit. de Feries, c. 5.

Why

Why the end of Michaelmas term is ſometimes holden in Advent; and the octaves of Hilary in Septuageſſima.

But the terms ſometimes extend themſelves into the days of the *church*, which we call *vacation*; as when Advent Sunday falleth on the 27th of *November*, then *Michaelmas* term borroweth the day after *out* of Advent; and when *Septuageſſima* followeth ſuddenly upon the *Purification*, Hilary term not only uſurpeth upon it, and *Sexageſſima* (which by the preſident of the church of *Rome* here before-mentioned it *may* do) but alſo upon *Quinquageſſima*, *Shrove Tueſday*, and *Quadrageſſima* itſelf; for all which there is matter enough in one place or † other already ſhewn. Yet it is *farther* countenanced by the ſtatute of 3 Edw. the Firſt, cap. 51. where it is thus provided: *Foraſmuch as it is great charity to do right to all men at all times (when need ſhall be) by aſſent of all the prelates it was provided, that aſſizes of* Novel Diſſeiſins, Mortdaunceſter, *and* Darrain preſentment, *ſhould be taken in Advent.* Septuageſſima *and Lent, even as well as inqueſts may be taken, and that at the ſpecial requeſt of the king made unto the biſhops.* Where it is to be noted, that inquiſitions *might* be taken before this ſtatute within the days prohibited or church time, and that this *licence* extended but to particulars therein mentioned.

Why aſſizes are holden in Lent.

It ſeemeth that by virtue of this ſtatute, or ſome *other* diſpenſation from the biſhops, *aſſizes* began firſt to be holden in *Lent*, contrary to the canons. I find in an ancient *manuſcript* of the monaſtery of St. *Albans*, a diſpenſation of this kind *thus* entituled;

Licentia conceſſ. juſtic. reg. de aſſiſ. tenend. ſacro tempore non obſtante.

Pateat univerſis per præſentes nos Richardum (miſeratione divinâ) *abbatem monaſterii Sancti Albani, licentiam &*

† *As* anno 1. 27 & 1. 36 *Hoveden.* p. 663.

poteſtatem

poteſtatem authoritate præſentium dediſſe dilecto nobis in Chriſto *Domino* Johanni Shardlow *& ſociis ejus juſtic. dom. regis aſſiſas apud* Barnet (*noſtræ juriſdictionis exemptæ*) *die lunæ proximo ante Feſtum S. Ambroſii capiendas juxta formam, vim & effectum brevis domini regis inde iis directi. In cujus, &c. anno Domini, &c.*

Sub magno Sigillo.

Whether this was *before* or after the ſtatute it appeareth not, it may ſeem *before*, or that *otherwiſe* it had been *needleſs*; but I find § Shardlow to be a juſtice of *Oier* in *Pickering Foreſt* 17 *Aug.* an. 8 Edw. I. If it were *after* it ſeemeth, the *writ* to the juſtices extended to ſomewhat *out* of the ſtatute, and that this *licence* was obtained *in majorem cautelam*. But to conclude; although we find not the *reaſon* of things done in ancient ages, yet we may be ſure *nothing* was done againſt the rule of the church without *ſpecial* licence and diſpenſation. The feaſt of St. *Ambroſe* mentioned in the licence was on the fourth of *April*, which commonly is about a week or two before *Eaſter*. And the *Abbat* of St. *Alban* having exempt juriſdiction within the province of *Canterbury*, granteth the diſpenſation to hold aſſizes in *tempore ſacro*, as the rubrick explaineth it, leſt the words (*noſtræ juriſdictionis exempta*) might be applied to ſome layick franchiſe. I aſſure myſelf there are *many* of this kind, if they might come to light.

Of the Returns.

Of the *returns* I will not venture to ſpeak *much*, but *nothing* at all of *Eſſoins* and *exception days*, for that draweth nearer to the faculty of lawyers, wherein I mean not to be *too* buſy. The *returns* are *ſet* days in every term appointed to the ſheriffs for certifying the courts what they have done in execution of the *writs* they received from them. And I take it, that in old times they were the *ordinary* days ſet to the defendants for appearance, every one of

§ In com. ejus.

them

them being a ſe'nnight after another, to the end that the defendant, according to his *diſtance* from the place where he was to appear, might have one, two, three, or more of theſe returns, that is, ſo many weeks for his appearance as he was counties in diſtance from the court where he was to appear. This is verified by the law of § *Ethelred* the *Saxon* king in caſe of vouching upon *Trover*.

Gif he cenne oþer an ſcira hæbbe ân ſucena fyrſt; gif he cenne oþer twa ſcira habbe twa ſucena fyrſt; gif he cenne oþer iii. ſcira hæbbe iii. ſucena fyrſt; Oþer eallra ſela ſcira. ſa he cenne. hæbbe ſa ſeala ſucena fyrſt;

If the vouchee dwell one ſhire off, let him at firſt have one week; if he dwell two ſhires off, let him have two weeks; if he dwell three ſhires off, let him have three weeks; and for ſo many ſhires as he dwelleth off, let him have ſo manyweeks.

The law of * *Henry* the Firſt is ſomewhat *more* particular; *Qui reſidens eſt ad domum ſuam ſummoniri debet de placito quolibet cum teſtibus. Et ſi domi non eſt idem dicatur vel dapifero, vel denique familiæ ſuæ libere denuncietur; ſi in eodem comitatu ſit, inde ad ſeptem dies terminum habeat; ſi in alia ſit 15 dierum terminum habeat: & ſi in tertio comitatu ſit, 3 Hebdomadæ; ſi in quarto, quartæ Hebdomadæ; & ultra non procedit ubicunque fuerit in Anglia, niſi competens eum detineat † ſoinius; ſi ultra mare eſt 6 Hebdomadas habeat & unam diem ad acceſſum & reeeſſum maris, niſi vel occupatio ſervitii regis, vel ipſius ægritudo vel ‖ Tempeſtas, vel competens aliquod amplius reſpectet.*

The ‡ ſtatute of §‖ *Marlebridge* cap. 12. ſoundeth to this purpoſe; §§ *In aſſiſis autem ultimæ preſentationis & in placito quare impedit de eccleſiis vacantibus dentur dies de quindena in quindenam, vel de tribus ſeptimanis in tres ſeptimanas, prout locus fuerit propinquus vel remotus.* And again *cap.* 27. *Sed ſi vocatus, &c. (ad warrantum coram juſticiar. itinerantibus) fuerit infra comitatum tunc injungatur vice-*

§ Leges *Ethelredi* cap. 93. * Legum *Hen.* 1. cap. 41. † Sonius, MSS. Seld. ‖ MSS. Cod. 1. intempeſtas.

‡ *This ſtatute was publiſhed* anno 52 *Henry* III. anno ſalut. 1267.

§‖ *The ſame with* Marleborough *in* Wilts, *famous for nothing more than that this parliament was holden there. So* Coke *Inſtitut. part* 2. *fol* 123.

§§ *Coke* ut ſupra fol. 149. *hath it thus,* Sed ſi warrantus ille fuerit infra comitatum tun', &c.

comiti

comiti quod ipſum infra tertiam diem vel quartam (ſecundum locorum diſtantiam) faciat venire ſicut in itinere juſticiar. fieri conſuevit. Et ſi extra comitatum maneat tunc rationabilem habeat ſummonitionem 15 *dierum ad minus ſecundum diſcretionem juſticiar. & legem communem.*

There was alſo *another* uſe of *Returns*, as appeareth by the *Reformed Cuſtomary* of Normandy, *Artic.* 10th; *ſome* of them belonged to pleas of *Goods* and *Chattels*, which we call *perſonal* actions, as thoſe of *Octab.* ſome to pleas of *Land* and *real* actions, as thoſe of *Quindena* to *Quindena*. *Nul n'eſt tenu ae reſpondere de ſon heretage en mavidre tems que de quinazanie in quinazanie.* The more *ſolemn* actions had the more *ſolemn* returns, as we ſee by the * Stat. *Dies communes in Banco*, which I leave to my maſters of the Law.

I will not ſpeak of the returns *particularly*, more than that Octab. is ſometimes reckoned by ſeven days, ſometimes by eight; by ſeven, *excluding* the Feaſt from which it is counted; by eight, *including* it. And the word is borrowed from the conſtitutions of the *Church*, where the ſeven days following *Eaſter* were appointed to be ferial days (as we have ſhewed before) in imitation of the *ſeven* days *Azymorum*, following the *Paſſover*, in the Levitical Law. But in this manner *Octab. Trinitatis* always includeth *nine* days, reckoning *Trinity* Sunday for *one*, by reaſon the *juſt Octabis* falleth on the Sunday following, which being *no* day in *Court*, putteth off the Return till the next day after, making Monday always taken for the *true Octab.* unleſs you will count theſe two days for no more than *one*, as the ‡ Stat. de *anno* Biſſextili in the like caſe hath ordained.

Of the Quarta Dies poſt.

Touching the *Quartam diem poſt* allowed to the defendant for his appearance *after* the day of return; it is derived from the ancient *Saxon*, *Salique*, *French*, and *German Laws*; where it was ordained, that the plaintiff ſhould *per triduum ſeu amplius adverſarium expectare uſque ad occaſum ſolis* (which they called *Sol Satire*) as appeareth abundantly

* Anno 51 Hen. III. altered by the Statute of 32 Hen. VIII. cap. 21.
‡ Anno 21 *Henry* III.

in

in their Laws, and in the *Formular* of *Marcellus*, as Bignonius notes upon the ſame: to which alſo may be added, that which occurreth in *Gratian*, cap. Biduum vel *Triduum*. But the *Original* proceedeth from the ancient cuſtom of the *Germans* mentioned by *Tacitus*; * *illud ex libertate vitium, quod non ſimul nec juſſi conveniunt, ſed et alter & tertius dies cunctatione coeuntium abſumitur.* He ſaith *ex libertate*, becauſe that to come at a *peremptory* time, was a *note* of ſervitude which the *Germans* deſpiſed.

Why I have uſed ſo much Canon and Foreign Law in the Diſcourſe, with an incurſion into the Original of our Laws.

I have uſed much *Canon* and ſome other *Foreign Laws* in this diſcourſe, yet I take it, not impertinently; for as the *Weſtern* nations are for the moſt part deduced from the *Germans*, ſo in ancient times there was a great *agreement* and *affinity* in their laws.

——————Facies non omnibus una,
Nec diverſa tamen, qualem decet eſſe ſororum.

They that look into the laws of our *Engliſh Saxons*, of the *Saliques*, *French*, *Almayns*, *Ripurians*, *Bavarians*, *Longobards*, and other *German Nations* about 800 years ſince, ſhall eaſily find, that out of them, and many other manners, rites, and cuſtoms of the *Saxons* and *Germans*, is the *firſt* part and *foundation* of our laws, commonly called the laws of Edward *the* Confeſſor, and common law. Two other parts principally (as from two pole ſtars) take their direction from the *Canon law*, and the laws of our brethren the *Longobards* (deſcending from *Saxon* lineage as well as we) called otherwiſe the *Feodal law*, received generally through all Europe: for in matters concerning the *Church* and *Churchmen*, *Legitimation*, *Matrimony*, *Wills*, *Teſtaments*, *Adultery*, *Defamation*, *Oaths*, *Perjury*, *Days of Laws*, *Days of Vacation*, *Wager of Laws*, and many other things, it proceeded ſometimes *wholly*, ſometimes for the greater *part* by the rules and precepts of the Canon law.

* Lib. de morib. Germanorum, cap. 11.

And in matters touching Inheritance, Fees, Tenures by Knights ſervice, Rents, Eſcheats, Dower of the third part, Fines, Felony, Forfeiture, Trial by Battle, &c. from the Feodal Laws chiefly, as thoſe that read the books of thoſe laws collected by *Obertus* and *Gerardus* may ſee apparently; though we and divers other nations (according as befitteth every one in their particular) do in *many* things vary from them; which *Obertus* confeſſeth to be requiſite, and to happen often among the *Longobards* themſelves. I wiſh ſome worthy lawyer would read them diligently, and ſhew the ſeveral heads from whence theſe of ours were taken: they beyond the ſeas are diligent in *this* kind, but *we* are *all* for profit and *Lucrando pane*.

Another great portion of our Common Law is derived from the *Civil* (unleſs we will ſay that the Civil Law is derived from ours); for Dr. *Cowell*, who hath learnedly travelled in comparing and paralleling of them, affirmeth, that no law of any Chriſtian nation whatſoever approacheth *nearer* to the Civil Law than this of ours: yet he ſaith, that *all* of them *generali hujus diſciplinæ æquitate temperantur, & quaſi condiuntur*. Had he not ſaid it, his book itſelf, intituled, *Inſtitutiones juris Anglicani ad methodum, & ſeriem inſtitutionum imperialium compoſitæ & digeſtæ*, would demonſtrate it; which *Bracton* alſo above three hundred years before (right well underſtanding) not only *citeth* the *digeſts* and *books* of the *Civil Law* in many places, for want of our Common Law; but in handling our Law purſueth the *method*, *phraſe*, and *matter* of Juſtinian's inſtitutes of the Civil Law.

When and *how* theſe ſeveral parts were brought into our Common Law, is neither eaſily nor definitively to be expreſſed. Thoſe, no doubt, of the *Canon Law* by the prevalency of the *clergy* in their ſeveral ages; thoſe of the *Feodal* by *military* princes, at and ſhortly after the conqueſt; and thoſe of *Civil Law* by ſuch of our reverend *judges* and *ſages* of ancient time, as for juſtice and knowledge-ſake ſought inſtruction thence, when they found no

rule

rule at home to guide their judgments by: for, I ſuppoſe they in thoſe days judged many things, *ex æquo & bono*; and that their judgments after, as *Reſponſa Prudentium* among the *Romans*, and the *Codex Theodoſianus*, became *preſidents* of Law unto poſterity.

As for the parts given unto Common Law out of the *conſtitutions* of our kings *ſince* the conqueſt, and before *Magna Charta*, I refer them (as they properly belong) to our Statute Law, though our *Lawyers* do reckon them ordinarily for Common Law.

But among theſe various heads of our Law, I deduce none from the *Scots*; yet I confeſs, that if thoſe Laws of theirs, which they aſcribe to *Malcolm* the Second, who lived about ſixty years before the conqueſt, be of that antiquity (which I cannot but queſtion) and that our book called *Glanvill* be wholly in effect taken out of the book of *their* Law, *verbatim* for the greateſt part, called *Regiam Majeſtatem* (for they pretend that to be elder than our *Glanvill*) I *muſt* (I ſay) ingenuouſly confeſs, that the greateſt part or portion of our Law is come from *Scotland*, which *none* I think verſed either in ſtory or antiquities *will* or *can* admit.

To come therefore to the point; if my opinion be *any* thing, I think the foundation of our Laws to be laid by our *German* anceſtors; but built upon and poliſhed by materials taken from the Canon Law and Civil Law. And under the *capacious* name of *Germans*, I not only intend our *Saxons*, but the ancient *French* and *Saliques*, not excluding from that paternity the *Norwegians*, *Danes*, and *Normans*. And let it not more miſlike us to take our Laws from the noble *Germans*, a *principal* people of *Europe*, than it did the *conquering Romans* to take theirs from *Greece*; or the *learned Grecians* theirs from the *Hebrews*. It is not credible that the *Britains* ſhould be the authors of them, or that their Laws, after ſo many tranſmutations of people and government, but eſpecially after the expulſion (in a manner) of their nation, or at leaſt of their nobility,

gentry, and freemen, the aboliſhing of their language, and the ceſſation of all commerce with them, ſhould remain or be taken up by the conquering enemy, who ſcarcely ſuffered *one* town in a county to be called as they named it, or one *Engliſh* word almoſt (that I yet have learned) to creep into their language: admit that much of their *ſervile* and *baſe* people remained pleaſed perhaps as well with their new *lords* as with their *old*; can we think that the *Saxons* ſhould take either Laws or manners, or form of government from them? but more expreſly, *Seneca* ſpeaking of *Claudius* the emperor's having made an abſolute conqueſt of this iſland.

* *Juſſit & ipſum*
Nova Romanæ
Jura ſecuris
Tremere oceanum.

In th' Ocean Iſle new Laws he ſet,
Which from the Roman *Ax were ſet.*

And more plainly, *Herodian* ſpeaking of *Severus* the emperor's going out of this iſland, † he *left* (ſaith he) *behind him in that part of the iſland ſubject to the* Romans *his youngeſt ſon* Geta, *to adminiſter Law and the Civil affairs thereof, and ſome of his ancient friends to be his councellors, taking his eldeſt ſon* Antonius *for his wars againſt the Barbarians.*

When the *Romans* conquered this land, they neither removed the inhabitants nor brought any foreigners upon them, other than (to govern and keep them in obedience) ſome legions of ſoldiers and ſmall colonies; yet that they made an alteration of their *Laws*, we may ſee in the *ſcripture* by the example of *Judæa*; for though *Pompey* obtained the kingdom there, rather by the confederacy with *Hyrcanus*, than by right of *conqueſt* (and therefore ſuffered them to enjoy their rites of religion, with the liberties of

* *Seneca* Philoſoph. de morte. cl. *Cæſariis.*

† Τὸν μεν νεώ τερον τῶν υιῶν τὸν γέταν καλούμενον καταλειπὼν, &c. *Herodiani* Hiſt. lib. 3. cap. 48.

moſt

most of their cities); yet it being reduced into a *province* (as this of ours was) their Laws were so changed, as that by their own confession, *John* xviii. 31. *It was not lawful for them to put any man to death.* Therefore our Saviour and the two thieves were judged, and suffer'd upon the *cross* after the *Roman* manner, not according to the *Laws* of the *Jews* (for *their* Law never inflicted the *cross* upon *any* offender) and the punishment of *blasphemy*, wherewith they charged *Christ*, was *stoning*; and the punishment of *theft* a *quadruple restitution*, or bondage in default thereof. As for the stoning of *Stephen* it was not *judicial*, but *tumultuous*, an act of fury and against Law: in which course also they *thought* to have murdered Saint *Paul*, had not *Lysias* prevented them, by sending him to his legal trial before *Cæsar*'s judgment-seat.

By this we may conceive how the *Romans* dealt with the *Britains* touching their Laws; and the story of Saint *Alban* and *Amphybalus* somewhat sheweth it: but what Laws soever the *Romans* made in *Britain*, the *Saxons* doubtless swept them all away with the *Britains*. There is certain proof of it; for *Antonius* made a constitution, that *all* nations under the *Roman* empire should be called *Romans*, and this was done when the northern people brake into the lower parts of *Europe*, and made their habitation there.

But more plainly, *Seneca* speaking of *Claudius* the emperor's having conquered this *Island*, as above,

Jussit & ipsum
Nova Romanæ
Juræ securis
Tremere oceanum.

In th' Ocean Isle new Laws he set,
Which from the Roman *Ax were set.*

The *old* inhabitants whom they expelled not, but lived mingled with, were still called *Romans*; as we see in the ancient Laws of the *Saliques* and *Burgundians* in *Cassiodorus* and

and others, and their Laws diſtinguiſhed by the titles of *Lex Barbara* and *Lex Romana*. But here in *Britain* after the Saxons had conquered, we never hear nor find any mention of *Lex Romana*, or of any *Roman*; which ſheweth that both *that*, and the Laws of the *Britains* were expelled and driven away together, or that of the *Romans* with the *Romans*, and that of the *Britains* with the *Britains*.

What the Laws of the *Britains* were, it remains at this day to be ſeen by a model of them, in an ancient manuſcript, under the title of * *The Laws* of *Hoel Dha* (that is *Hoel the Good*) nothing conſonant to theſe of ours at this day, or thoſe of the *Saxons* in time paſt. But we find by the *Red Book in the Exchequer*, that the Laws of *Henry* I. do ſo concur in many things with them of the other nations we ſpeak of, that ſometimes he not only citeth the *Salique Law*, and the *Rubuarian* or *Belgique* by *name*, but deduceth much of the text *verbatim* from them. And we find alſo a great multitude of words of *art*, names of *offices*, *officers*, and *miniſters* in our *Law*, common in old time to the *Germans*, *French*, *Saliques*, *Longobards*, and other nations, as well as to our *Saxons*, *Danes*, and *Normans*, but not one to my knowledge that riſeth from the *Britiſh* tongue; nor do we, to my knowledge, retain any *Law*, *Rite*, or *Cuſtom* of the ancient *Britains*, which we received not from the *Saxons* or *Germans*, as uſed alſo by them of old, before they came into *Britain*.

For theſe few words that are found in our Law *chirographer*, *protonotary*, *&c.* whereby ſome argue the antiquity of our Law to be from the *Druides*, whom *Cæſar* and *Pliny* report to have uſed the *Greek* tongue; it is doubtleſs, that they came to us from the *Civil* Lawyers, and the *one* of them being a mongrel, half Greek and half Latin, could not deſcend from the *Druides*, who had neither *knowledge* nor *uſe* of the Latin tongue.

* *Theſe Laws were made by* Hoel Dha *king of* Wales, *about the year* 940, *and ſince the writing of this tract have been publiſhed to the world by our author himſelf, in the firſt tome of his* Concilia Britannica, *page* 408.

They

They therefore that fetch our Laws from *Brutus Multnutius*, the *Druides*, or any other *Britiſh* or *Britiſh* inhabitants here of old, affirming, that in all the times of theſe ſeveral nations (viz. *Britains*, *Romans*, *Saxons*, *Danes*, and *Normans*) and of their kings, this realm was ſtill ruled with the ſelf *ſame* cuſtoms that it is *now* governed withal, do like them that make the *Arcadians* to be *elder* than the *Moon*, and the god *Terminus* to be ſo fixed on the *Capitoline Hill*, as neither mattocks nor ſpades, nor all the power of *men* or of other gods could remove him from the place he ſtood in.

And thus I END.

N° LVI.

Of Epitaphs.

By Mr. ABRAHAM HARTWELL.

1600.

BECAUSE I am in time the laſt that was admitted into this ſociety, and in hability the leaſt to deliver any thing that is worthy of your hearing, I am to crave that ye would not expect any matter at my hands, that may be any way pleaſing unto ye: for beſides the many difficulties that have ariſen unto me, in the very queſtion itſelf, I have found my reading and obſervation in that point to be ſo ſlender, as I dare not ſet down any thing in writing that may be thought fit for your knowledge or underſtanding: as namely for example, when I conſidered the ſubject itſelf, wherein the chief ground of this cauſe conſiſteth, I could not fully reſolve what was meant by the word *Epitaph*, which in the very original of the Greek ſeemeth to be Τὸ επι τον Τάφον, (*i. e.*) whatſoever is upon a man's tomb. And ſo whether it be pillar, armes, or deviſe

deviſe that is upon a grave or tomb, it may originally be called an *Epitaph:* but reſpecting the common acceptation of the word, which I take to be an inſcription ſet upon the grave; I relinquiſhed that former and more general ſignification of the term *Epitaph*, and tied myſelf to be more particular, which is, any thing that is written on a tomb. Touching the antiquity thereof, although my ſmall reading doth afford me but little knowledge, yet I do not doubt, but that diverſe which are to ſpeak after me will clearly prove, that *the Epitaph* hath been uſed here in England (for to that point am I reſtrained by the queſtion itſelf) in the time of the Britons, the Romans, the Saxons, the Normans, and even in all ages until our times; but touching the variety of *Epitaphs*, it is ſuch a large field to walk through, as it is not for ſo weak limbs (as I have) to run over it in many days, for ſome are in proſe and ſome in verſe; ſome are long and ſome are ſhort; ſome are Latin and ſome are Engliſh; ſome are grave and ſome are ridiculous. Of all which ſorts, as alſo of divers and ſundry others, if a man ſhould at this preſent diſcourſe, we ſhould ſpend a great deal more time than is allowed us for this buſineſs: I have been no great traveller, partly in regard of mine own infirmities, and partly in reſpect of mine attendance elſewhere, and therefore I cannot finiſh this occaſion according to your expectation. Two *Epitaphs* I have only obſerved which are authentical and of note, becauſe they ſtrain in a high note of ſingularity; the one for ridiculous abſurdity, the other for commendable brevity. The ridiculous is in Lambeth church graven in a wall there, and runneth forſooth in rhime as extraordinary as ever I heard any; the party I will not touch, but the *Epitaph* itſelf I will deliver to you, and this it is:

Agnes Tidenham married firſt to Thomas Marſhall, then
To John Manning, lieth buried here; ſhe lived eight times ten
And full five years; ſix children by Marſhall ſhe had, three
Were ſons, the other daughters, of them none living be.

Sh

She died the 22d day of March, and in the year
Of our Lord as by the date here written may appear,

Anno Dom. 1583.

Ad ſumptum Thomæ Fulkes.

The other brief *Epitaph* may well compare with that of Anthony Guevara in his Epiſtle, wherein he hath congeſted together a number of *Epitaphs* which he highly commendeth, but above all others, he extolleth one of a captain, who had engraven on his tomb in the Spaniſh tongue; here lieth ſuch a man, *mucho contra ſua volontad*, and diſcourſeth on it ſo far as he doth not ſtick to ſay, that *Cæſar*, *Pompey*, *Mouſolus*, &c. although they had moſt magnificent and ſtately tombs, yet they lay therein, *Mucho contra ſuas voluntades*. This of mine is of a moſt learned doctor, who deceaſed in London and lyeth buried in Cambridge within a College, bearing the name partly of his own foundation, and hath none other *Epitaph* on his tomb but only *Fui Caius*, alluding perhaps to *Fuimus Troes*, and *Fuit Iliu*. but in mine opinion it goeth far beyond the *Oblivio* of Poules, whereof there was ſome mention made at our laſt meeting.

N° LVII.

Of Caſtles.

By Mr. JOSEPH HOLLAND.

15th May 1599.

JEFFERY of Monmouth doth make mention of divers Caſtles of Stone in the time of the Britons, and of Thonge Caſtle, and divers others builded by the Saxons.

Upon the plains of Saliſbury there are to be ſeen divers great fortifications of earth which are called Caſtles at this

day; and in Dorſetſhire, by Dorcheſter, there remaineth one very ſtrong fortification of earth on the top of a hill environed with a double ditch of great depth, and it is called Maiden Caſtle, for that by report of the country it was never won: for the ſpace of ij miles about that Caſtle do appear divers little hills called Barrows, under the which there hath been found the bones of men, and divers ancient coines: the report of the country is, that after the battle that was fought in that place, theſe Barrows were erected for monuments unto ſuch as were buried there.

It appeareth in the Book of Doomſday, that William the Conqueror overthrew 48 houſes within the city of Exon, in order to erect a Caſtle in that place.

King Stephen granted licence to all men to build either Caſtles, Towers, or Holds for defence of themſelves upon their own lands, hoping that they would have imployed them for his benefit and advantage; but king Henry the Second ſeeing the inconvenience that grew thereby, cauſed 1115 of the Caſtles which were erected in the days of king Stephen to be overthrown and caſt down.

At this day few Caſtles are maintained but ſuch as are in the queen's poſſeſſion.

N° LVIII.

Of the Etymology, Dignity, and Antiquity of Duke or Dux.

Antiquity with foreign Nations.

IT ſeemeth it took its name firſt *a ducendo populum vel exercitum*, and was uſed among ſundry people as *Princeps populi*; and by that name all the expoſitors of the bible into Latin, as well ancient as modern, have termed ſundry Princes ariſing from Eſaus's lyne, Duces, as in Joſhua alſo; and I have read in old manuſcripts books in Engliſh ſundry times *Duke Joſhua*.

In

In many old Regiſters it was common before the conqueſt. Antiquity with us.

The firſt I find with us in record is in Henry the third's days, named *Johannes filius Petri Dux Comitatus Richmunde.* Of the name of honour.

It ſeemeth that our kings did imitate both the emperor of *Almayne* and the French king, where the heads of ſundry great houſes and Princes of the blood were called by the names of *Dukes.*

N° LIX.

A further Diſcourſe of Sterling Money.

By Thomas Talbot.

STERLING Money taketh his name of the Eſterlinges, who uſed to bring ſilver into this land of that goodneſs in value and *poſte*; as to this day all our good ſilver reduced into coin is uſually called Eſterling or brefelie Sterling money, and the Eſterlings houſe in London is by contraction of ſpeech now called Stilyard, and not Eſterling yard, and our gold was commonly called Florencies of the Florentines who uſed to bring coined Gold into this land of ſuch goodneſs and pureneſs as our old Royals were wont to be; and therefore they are much deceived that affirm it to take his name of the town of Strivelin in Scotland, and to be coined there in the time of king Edward the Firſt, what time he beſieged it; but that town is not called Sterling but Striveling, and ſo the coin ſhould be called Striveling Money, and not Sterling, if it had taken his name of that place. Matthew Paris, who ended his life in the 43 year of king Henry III. long before the ſiege of Strivelin, writing of the diſcord between the French king and king Henry II. anno 1189. fol. 200. at what time the pope ſent the cardinal of Aquarrio to make peace between them, hath theſe words, *Adjunxit inſuper rex Franciæ,* &c.

&c. deſiderabiles Eſterlingos regis Anglicæ, &c. And king John in the firſt year of his reign, by his charter granted to earl Theobald, *ducentas libras Sterlingorum in Anglia cum Caſtello.* And the ſame king in the patent roll *Anno regni ſui ſexto*, hath theſe words, *Aſſiſum eſt de moneta pro vetus moneta currat unde quelibet libra ſit lacta ij s. vi d. ad plus et libra que plus lactaverint, & denarii qui plus lactaverint perforentur & reddantur ſicut alias proviſum fuit. Judei vero aurifabri et mercatores forinceci emant moneta iſta victum et veſtitum ſuum tantum, ſed uſque debent preſitum vel mercandiſas facere niſi de groſſe, & forti moneta que ſit de lege et pondere denarii Sterlingi, &c.* It may be gathered by the Black Book in the chequer, that it did take his beginning in the time of king Stephen or king Henry the ſecond, and not before.

N° LX.

Of Foreſts.

3d Novembris 1591.

WILLIAM the Conqueror pulled down villages and churches for the ſpace of 30 miles, to make thereof a Foreſt betwixt Saliſbury and the Sea ſouthward, which unto this day is called the New Foreſt; alſo he ſeiſed the moſt part of the Foreſts of England into his own hands, and made a law againſt thoſe that ſhould kill any of the deer, which was, to have their eyes put out; in which new Foreſt William Rufus was ſlain.

N° LXI.

Of the ſame.

By RICHARD BROUGHTON.

THE great charter of Foreſts granted by king Henry III. unto the commonalty, maketh mention of Foreſts to be made in England by king John, Richard the Firſt, and Henry the Second, and giveth authority to view the ſame, and to diſafforeſt ſo much as by them was made Foreſt, and was not their own demeſne; but long before this time was the new Foreſt made by William the Conqueror, as appeareth by theſe words, which are in an old Engliſh chronicle that I have, William Rous that was William Baſtards ſon who made the new Foreſt, and caſt down and deſtroyed 26 towns and 80 houſes of religion, all for to make his Foreſt longer and broader, became wondrous glad and proud of his Wood and of his Foreſt, and of the wild beaſts that were therein; but ſo it befel, that one of his knights, that hight Walter Tyrrel, would have ſhot at an hart, but his arrow glanced upon a branch, and through inſaveture ſmote the king to the heart, and ſo he fell down dead. Mr. Camden makes mention of a Foreſt in Eſſex granted by charter of Saint Edward.

Ich Edward king
Have geven of my Forcſt the keeping,
Of the hundred of Chetmer and Dancing,
To Randolph Pepking, and to his kinting,
With harte and hinde, do and bucke, &c.

And Mr. Hoker in his chronicle fol. 207, hath certain laws of the Foreſt made by Canutus.

N° LXII.

Our certain and definite Topographical Dimenſions in ENGLAND, compared with thoſe of the GREEKS and LATINS, ſet down in Order, as they ariſe in Quantity.

By Mr. WHITLOCKE.

Græcorum.	*Anglorum.*	*Latinorum.*
I. DACTYLOS, or *Digitus*, the breadth of a finger.	This is no real meaſure in England.	No meaſure among the Romans.
II.	YNCHE which by the ordinance of 31 Edward III. is three grains of barley dry and round.	UNCIA *eſt digitus et tertia digiti pars*, and this may well be one ynche, for 12 of theſe UNCIÆ, make the PES, and ſo it is with us in England.
III. PALMUS, a handbreadth, or that of the four fingers.	No publick meaſure in England.	PALMUS minor, among the Latins is menſura, tertia *unciarum*.
IV. LICHAS *ſpacium inter judicem et pollecim*, the ſpace between top of the fore-finger and the thumb, it is accounted Ten fingers, or Dactyli.	No publick meaſure with us.	No meaſure among the Romans.

V. ORTHO-

Græcorum.	*Anglorum.*	*Latinorum.*
V. ORTHODORON, the ſpace between the wriſt and the top of the fore finger, it is accounted the ſpace of XI Dactyli or Fingers.	No meaſure in England.	No meaſure among the Romans.
VI. SPITHAME, in Latin Erdarius, the ſpan between thumb and little finger.	None in England.	Nor among the Latins.
VII. POUS *pes*, 16 Dactyli among the Greeks.	A FOOT, containing the ſtatute 12 Inches.	PES, ſpatium unciarum, 12 as in England.
VIII. CUBIT of the Greeks, from the elbow to the top of the middle finger, and this is 24 fingers, or Dactyli.	Not with us.	This meaſure with the Romans is called SESQUIPES, that is 18 Inches, as much as 24 fingers.
IX. BEMA *Gradus.*	A Step, no meaſure.	GRADUS a Step, two *pedum & dimidii.*
X.	A YARD, containing three feet.	PES TRIPLEX, that is, three feet a juſt yard.
XI.	An ELL, that is four feet.	ULNA, this is not properly our ell, though we interpret it ſo, but a fathom.
XII.	PACE, the ſtride of a man, by which miles are meaſured.	PASSUS MINOR, ſpatium two *pedum & dimidii.* PASSUS MAJOR, *ſpatium quinto pedum.*

XIII.

Græcorum.	*Anglorum.*	*Latinorum.*
XIII. PASSUS, called Orgya by the Greeks, a fathom, the ſpace from the tip of one middle finger to the other, the arms being ſtretched aſunder as far as may be one from the other.	FATHOM, a meaſure not uſed with us in meaſuring the length or breadth of grounds, but the depth of pits, and in uſe among ſeamen in meaſuring cables, and ſounding of depths.	PASSUS, among the Latins four cubits, that is, juſt as much as the Greeks ſix feet.
XIV.	PERCH, five yards *& dim.* 17 feet *& dim.*	
XV. Feet . . .	Day-work is four perches, 22 yards, and 70 feet.	
XVI. PLETHRON, a meaſure among the Greeks of 100.		
XVII.	ROOD is 10 days work, 40 perches, 240 feet quadrants, or the fourth part of an acre.	
XVIII. STADION, among the Greeks 600 feet.		
XIX.	ACRE, forty perches in length, in breadth four, ſo ſquare it is 160 perch, which is 880 feet, in all there is of ground 4840 feet.	
XX.		JUGERUM, among the Latins was in length 240 feet, in breadth 120, which hath of ground in it 28800 feet, this is uſed for our acre, but is more ground.

XXI.

Græcorum.	*Anglorum.*	*Latinorum.*
XXI. MILION, 1000 *Paſſus. Romani utebantur.*	MILE.	MILLIARE.

Geographi *paſſu, Milliari.*
Architecti *digito, palmo, pede.*
Ruſtici *pede, paſſu, actu minimo,* qui erat longus, pedes 120, latus 4, in toto 480. *Minore actu* qui erat longus, et latus, 120 pedes, in toto 14400. Climata long. et lat. pedes 60, quadrat 3600. *Verſu* long. et lat. pedes centum, in toto 10,000 *Jugera.*

Pertica, a meaſure of 10 feet among the Romans: this cannot be our Perch.

Of theſe matters read *Roſinus libro* 8 capite 10. *tit. de legib. agrariis, Varro,* Colummella, in their firſt books. Roſinus capite *de limitibus terminis, lib.* 8. cap. 8. *Antiquitum Romanorum,* where many leaves of this argument are ſet down.

Limitum genera.

Decumeni ab oriente ad occidentem
Cardinis a meridie in Septentrionem
Prorſi ab occidente, in orientem
Tranſverſi a Septentrione in meridiem.

MR. THOMAS HEARNE's

APPENDIX

TO HIS EDITION OF

CURIOUS DISCOURSES.

APPENDIX.

N° I.

Sir JAMES WHITLOCK's Epitaph.

Out of a MS. in Quarto, containing an Account of the Monuments in many of the Churches of BUCKINGHAMSHIRE, with Notices of the Foundation and Antiquities of the ſame, collected and given to me by BROWNE WILLIS of WHADDON-HALL in BUCKINGHAMSHIRE, Eſq; page 319.

FAWLEY.

IN the burial place of the Whitlocks or S. Iſle, which was built by them, is this inſcription:

Hîc depoſita ſunt Corpora
Reverendi judicis Jacobi Whitelock militis, unius Juſticiar. ad placita | coram Rege. Natus fuit Londoni 28 Nov. 1570. Primum ſtuduit Oxonii, | ubi ſuſcepit gradum in Jure Civili. Deinde operam dedit Juri Municipali | in dio Templo London, & in eo legebat; poſtea Serviens ad Legem factus | eſt juſticiar. Ceſtriæ termino Michaëlis 1620. Abinde aſſumptus eſt in Bancam |
Regis term. Mich. 1624.

Habuit ex uxore Elizab. unum filium Bulſtrode Whitlock; duas filias, Elizabeth. nuptam Thomæ Moſtyn Militi, & | Ceciliam innuptam tempore mortis ſuæ. Obiit apud Fawley Court 21 Junii 1632 | Vir eruditione & prudentia illuſtris, vita & moribus venerandus. | Et ſpectatiſ-

ſime

ſime matronæ Elizab. uxoris dicti Jacobi, quæ nata eſt | in hoc agro Buckinghamienſi 25 Julii 1575, patre Edwardo Bulſtrode | de Bulſtrodes in Upton armigero, matre Cecilia filia Johannis Croke Militis. | Fæmina marito ſuo amantiſſima, fideliſſima, in Re Familiari prudentiſſima, | pia, Religioſa, in Deum devota, in pauperes benefica, obiit apud Falley Court | in vigilia Pentecoſtes 28. die Maii 1631.

No II.

Mr. CAMDEN's Will,

Out of the MSS. Collections of the learned Dr. THOMAS SMITH which he left to me at his Death, Vol. VIII. p. 25.

E Regiſtro Curiæ Cant. extract.

IN the Name of God amen. I William Camden Clarenceux ſound of body and mind, and accordingly mindfull of my mortalitie, repoſing aſſuredly all my hope in the infinite mercie of my Saviour and Redeemer Jeſus Chriſt, into whoſe hands I commend my Soul, make and ordaine this my laſt will and teſtament in manner and forme following. Firſt, I bequeath my bodie to be interred in Chriſtian and decent manner in that place where it ſhall pleaſe God to call me to his mercie, and to the poore of the ſaid place in this ſort; if at Weſtminſter eight pounds to the poor of Saint Margaret's Pariſh; if at Chiſilhurſt to the poor there, if elſewhere to the poore of that place eight pounds. *Item*, I bequeath to Sir Foulk Grevill Lord Brooke, Chancellor of the Exchequer, whoe preferred me *gratis* to my office, a peece of plate of tenn pounds. *Item*, to the Companie of Painter Stayners of London, to buy them a peece of plate in memoriall of mee, fixteene pounds. *Item*, to the company of cordwayners or ſhoemakers of London twelve pounds, wiſhing they would likewiſe make thereout ſome peece of plate in memorie of mee. *Item*, to my couſin John

John Wyatt, Painter of London, one hundred pounds. *Item*, to Giles Nicholſon of Poulton in Lancaſhire, to be committed to maſter Colevile of Lancaſter, or ſome other honeſt man of that place for his uſe, twentie pounds. *Item*, to Lant the younger, bookſeller in Litchfeild, five pounds. *Item*, to maſter Thomas Allen of Glouceſter Hall in Oxford, ſixteen pounds. *Item*, to Janus Gruterus, librarie keeper to the Prince Palatine Elector at Hidelberg, five pounds. *Item*, to Mr. Harvie, vicar of Chiſelhurſt, ſeaven pounds. *Item*, to Leonard Brooke of Weſtminſter, ſometimes my ſervant, ſix pounds. *Item*, to Camden of London, Silkeman, tenn pounds. *Item*, to my godſonne Chriſtopher Birkhead, two pounds. *Item*, to my godſon Thomas Godwin, two pounds. *Item*, to my god-daughter Feild, two pounds. *Item*, to every one of the ſix heralds *, fower pounds. *Item*, to every purſivant ordinarie and extraordinarie, two pounds. *Item*, to the ſinging men of the collegiate church of Weſtminſter, ſix pounds. *Item*, to each virger, two pounds. *Item*, to the bell ringers and under officers in the ſaid church amongſt them ſix pounds. *Item*, to the choriſters, fower pounds. To theſe followeing a peece or memoriall rings of the ſame value. To Sir Francis Leigh of Weſtminſter, fower pounds. To Sir Peter Manwood, foure pounds. To Sir William Pit, three pounds. To Mr. Saint Leo Knivetyn, three pounds. To Mr. John Chamberlaine, three pounds. To Mr. Limiter, three pounds. To Mr. † Seldon of the Temple, five pounds. To Mr. Harding the Uſher, fower pounds. To Mrs. Ireland, fower pounds. To Mrs. Buſh, late wife to Gabriell Birkhead, two pounds. *Item*, to John Halton, my ſervant, thirtie pounds. *Item*, to old Mother Driver, three pounds. *Item*, to Richard Hopkins, three pounds. To his daughter Alice, ſix pounds. To his ſonne, three pounds, but now that ‡ he is dead, the whole eight pounds to his ſonne. As for my bookes and papers, my will is that Sir Robert § Cotten of Conington, knight and baronett, ſhall have the firſt view of them, that he may take out ſuch as I borrowed of him; and I bequeath unto

* *Sic in MS. noſtro.* † *Sic.* ‡ *Sic.* § *Sic.*

him

him all my imprinted books and manuſcript, except ſuch as * concernes armes and heraldry, the which with all my auncient ſeales I bequeath unto my ſucceſſor in the office of Clarenceux, provided that whereas they coſt me much, that he ſhall give to my couſin John Wyatt, Painter, ſuch ſumme of money as maſter Garter and maſter Norry for the time being ſhall think meete. And alſoe that he leave them to his ſucceſſor in the office of Clarenceux. Of this my laſt will and teſtament I conſtitute and ordaine William Heather of Weſtminſter, gentleman, my ſole executor, Sir Robert Cotton of Conington, knight and baronet, and maſter John Wiſe of gentleman, my overſeers, bequeathing to each of them ten pounds, blacks for each of them, and for twelve poore men of Weſtminſter, beſides the almeſmen: willing moreover that all theſe legacies be paid within one yeare after my departure out of this world. Upon the peece of Plate for the Painters, *Guil. Camdenus Clarenceux, filius Sampſonis Pictoris Londinenſis, dono dedit.* Upon the peece of Plate for the Cordwayners, *Guil. Camdenus Clarenceux, filius Sampſonis Pictoris London. dono dedit.* William Camden. Signed and ſealed in the preſence of Richard Harvey, John Hilton.

Probatum fuit Teſtamentum ſupraſcriptum apud London' coram venerabili viro Domino Willielmo Byrd, Milite, Legum Doctore, Commiſſario legitime conſtituto, decimo die Menſis Novembris, anno Domini milleſimo ſexcenteſimo viceſimo tertio, juramento Willielmi Heather executoris in hujuſmodi Teſtamento nominati. Cui commiſſa fuit adminiſtratio omnium & ſingulorum bonorum, jurium & creditorum dicti defuncti de bene & fideliter adminiſtrando eadem ad ſancta Dei Evangelia jurat.

Tho. Welham Regiſtrarii Deputatus.

Swann. III. Qr. Tertio Libro.

* *Sic.*

N° III.

N° III.

Out of a ſmall Volume of Epiſtles, by DEGOR. WHEAR, entituled CHARISTERA, printed at OXFORD Anno 1628 in Octavo. This Letter bears no Date. The next in order, if he obſerve the Order of Time, is dated October 10, 1625.

Ad Michaëlem Oldſworthum Amicum ſingularem ſingulariter colendum.

INter literas humaniores quas egregie doctus es (mi *Oldſworthe*) non dubito quin Hiſtoriam rerum gerendarum animam, impenſius ames: inde *Methodum* meum limatiorem jam gaudeo & anctiorem tibi obfero; non quaſi te quicquam quod minus jamdudum noveris docerem, cave me adeo *Suffenum* arbitreris, ſed ut tuum etiam (ſi merear) calculum obtinerem, de quo haud parum mihi gratulabor; ſimul ut pignus aliquod apud te exiſteret quanti te æſtimem & colam, quum inſuper ſubſcripſerim

Tuus D. W.

Nº IV.

E Coll. noſtris MSStis Vol. IV. p. 1.

[1] Ἰώσηπτος ἐκ τοῦ λόγυ ἐπιγεγραμμένυ κατὰ Πλάτωνος περὶ τῆς τοῦ παντὸς αἰτίας. Περὶ τόπυ ἐν ᾧ συνέχονται ψυχαὶ δικαίων τε καὶ ἀδίκων.

[2] Ὁ ἅδης τόπος ἐστὶν ἐν τῇ κτίσει ἀκατασκεύαστος χωρίον [3] ὑπόγειον ἐν ᾧ φῶς κόσμυ οὐκ ἐπιλάμπει· φωτὸς τοίνυν [4 μὴ καταλάμποντος, ἀνάγκη σκότος διηνεκῶς τυγχάνειν ἐν τούτῳ [5] τῷ χωρίῳ,] ὃ ὡς φρέαρ ἀπενεμήθη ψυχαῖς ἐφ' ᾧ κατεσάθησαν ἄγγελοι φρενοὶ, πρὸς τὰς ἑκάστων πράξεις διανέμοντες τὰς τῶν τρόπων προσκαίρους κολάσεις. ἐν τούτῳ δὲ τῷ χωρίῳ τόπος ἀφώρισαι [6] τῆς λίμνης πυρὸς ἀσβέστου. ἐν ᾧ μὲν ἀδέπω τινὰ [7] καταρρεῖφθαι ὑπειλήφαμεν. ἐσκεύασαι δὲ εἰς τὴν προωρισμένην [8] ἡμέραν, ἐν ᾗ δικαίας κρίσεως ἀπόφασις [9] τιμία" πᾶσιν ἀξίως [10] προσηνενέχθη. καὶ οἱ μὲν ἄδικοι, καὶ θεῶ ἀπειθήσαντες, τάτε μάταια ἔργα χειρῶν ἀνθρώπων κατεσκευασμένα εἴδωλα ὡς θεὸν τιμήσαντες, ταύτης τῆς ἀϊδίυ κολάσεως, [11 ὡς] ἄτιοι μιασμάτων γενόμενοι, προσκοιθῶσιν· οἱ δὲ δίκαιοι τῆς ἀφθάρτυ καὶ [12] ἀνεκλιπεσάτυ βασι-

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1. Alii Caio, alii Hippolyto atribuunt. 2 Καὶ ἔτος μὲν ὁ περὶ δαιμόνων τόπος· περὶ δὲ ᾅδου, ἐν ᾧ συνέχονται ψυχαὶ δικαίων τε καὶ ἀδίκων, ἀναγκαῖον εἰπεῖν. ὁ ᾅδης, τόπος ἐστὶν &c. in Hœſchellii Editione. 3 MS. ὑπογίων, perperam. 4 Hæc uncis incluſa ad oram MS. adjecta ſunt. 5 MS. mendoſe τὸ χωρίον, niſi forſan plenius, ut Hœſchelii MS. legas, φωτὸς τοίνυν ἐν τούτῳ τῷ χωρίῳ μὴ καταλάμποντος, ἀνάγκη σκότος διηνεκῶς τυγχάνειν. τοῦτο τὸ χωρίον ὡς φρέαρ, &c. 6 Τις, λίμνη in Ed. *Hœſch.* 7 Καταῤῥεῖφθαι. *Hœſch*, lege Καταῤῥῖφθαι. 8 Ημέραν ὑπὸ θεῦ, ἐν ᾗ *Hœſch.* 9 Μια *Hœſch.* 10 Προσενεχθείη *Hœſch.* 11 Incluſum omiſſum in noſtro Cod. ſed habet *Hœſch.* 12 Sic ſcribe pro ἀνεκλειστάτυ quod eſt in MS. In *Hœſch.* ἀνεκλείπτυ habetur.

λείας

λείπεις τύχωσιν· οἱ ἐν τῷ ἅδῃ νῦν μὲν συνέχονται, ἀλλ' ἐ τῷ αὐτῷ τόπῳ [1] ᾧ καὶ οἱ ἄδικοι. μία γὰρ εἰς τοῦτο τὸ χωρίον κάθοδος, ἣ τῇ πύλῃ ἐφεστῶτα ἀρχάγγελον ἅμα στρατιᾷ πεπισεύκαμεν. ἣν πύλην διελθόντες οἱ καταγόμενοι ὑπο τῶν ἐπὶ τὰς ψυχὰς τεταγμένων ἀγγέλων ἐ μιᾷ ὁδῷ πορέυονται. ἀλλ' οἱ μὲν δίκαιοι, [2] εἰς δεξιὰ φωταγωγέμενοι, κ᾽ ὑπὸ τῶν ἐφεστώτων 3 κατόπιν ἀγγέλων ὑμνέμενοι, ἄγονται εἰς χωρίον φωτεινόν ἐν ᾧ οἱ ἀπ' ἀρχῆς δίκαιοι πολιτεύονται, ἐχ' ὑπ' ἀνάγκης κρατέμενοι, ἀλλὰ τῆς τῶν ὡρωμένων [4 ἀγαθῶν] θέας ἀεὶ ἀπολαύοντες 5 . . . . . κ᾽ [6] τῶν ἑκάστοτε καινων προσδοκίᾳ ἡδόμενοι, καὶ εἶνα τούτων [7] βελτίονα ἡγέμενοι. οἷς ὁ τόπος ἐ καματηφόρος γίνεται· ἐ καύσων, ἐ [8] κρύος, ἐ πρίβολος ἐν αὐτῷ, ἀλλ' ἡ τῶν πατέρων δικαίων τε ὁρωμένη ὄψις πάντοτε μειδιᾷ, ἀναμενόντων την μετὰ τοῦτο τὸ χωρίον ἀνάπαυσιν [9] αἰωνίαν βιωτὴν ἐν ἐρανῷ. [10] τοῦτον δὲ κλητίζομεν ὀνομασὶ κόλπον Αβραάμ. οἱ δὲ ἄδικοι [11 εἰς] ἀριστερὰ ἕλκονται ὑπὸ ἀγγέλων κολασῶν, ἐκέτι ἐκεσίως πορευόμενοι, ἀλλὰ μετὰ βίας ὡς δέσμιοι ἑλκόμενοι, οἷς οἱ ἐφεστῶτες ἄγγελοι [12 ἐπιτελοῦντες] διαπέμπονται [13] ἐπονειδίζοντες κ᾽ φοβερῷ ὄμματι [14] ἐπαπειλοῦντες, εἰς τὰ κατώτερα ὠθοῦντες. [15] ὃς ἀγομένους ἕλκουσιν οἱ ἐφεστῶτες ἕως πλησίον τῆς γεέννης· οἱ [16] ἐγγίονες τοῦ μὲν [17] βρασμοῦ ἀδιαλείπτως [18] ἐπαισθάνεσι, κ᾽ τοῦ τῆς θέρμης ἀτμοῦ οὐκ ἀμοιρῦσι. [19] ταύτης δὲ τῆς ἐγγίονος ὄψεως τὴν

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1 Ita ex *Hæsch.* nam MS. noſtrum, ὡς καὶ οἱ δίκαιοι. 2 Sic *Hæsch.* at MS. ἐκ. 3 Ἴσ. κατόπιν *Hæsch.* κατὰ τόπον. 4 Vocem iſtam omittit MS. ſed habet *Hæsch.* 5. Hanc MSi. lacunam impreſſus non agnoſcit. Et rectius quidem abeſt. 6 Τῇ τῶν *Hæsch.* 7 Βελτίω *Hæsch.* 8 In MS. κροϊσσο. 9 *Hæsch.* καὶ αἰωνίαν ἀναβίωσιν, 10 *Hæsch.* τούτῳ δὲ ὄνομα κικλήσκομεν κόλ. Αβ. 11 Omittit MS. ſed adjici debet. 12 Non habet *Hæsch.* 13 Ονειδίζοντες *Hæsch.* 14 Sic *Hæsch.* at MS. ἀπαπει—— 15 Ἃς ἀγομένας *Hæsch.* 16 Ἡσχίον *H.* 17 Ισ. βρυγμῦ. 18 Ταπαύσι *H.* 19 Αὐτῆς *H.*

φοβερὰν καὶ ὑπεβαλλόντως [1 ξανθὴν] θέαν τοῦ πυρὸς ὁρῶντες, 2 καταπεπλήγασι τῇ προσδοκίᾳ τῆς μελλέσης κρίσεως, ἤδη δυνάμει κολαζόμενοι. ἀλλὰ καὶ ἔτ' τὸν τῶν 3 δικαίων χορὸν καὶ τὰς δικαίας ὁρῶσι, καὶ ἐπ' αὐτῷ τούτῳ κολαζόμενοι. χάος γαρ βαθὺ καὶ μέγα ἀνὰ μέσον ἐστήρικται ὥστε μὴ δίκαιον συμπαθήσαντα προσδέξασθαι, μήτε ἄδικον τολμήσαντα διελθεῖν. ἔτος ὁ περὶ ᾅδου λόγος, ἐν ᾧ ψυχαὶ πάντων κατέχονται ἄχρι καιροῦ ὃν ὁ θεὸς ὥρισεν, ἀνάστασιν, τότε πάντων ποιησόμενος, ἐ ψυχὰς μετενσωματῶν, ἀλλ' αὐτὰ τὰ σώματα ἀνιστῶν. ἃ λελυμένα ὁρῶντες ἀπιστεῖτε Ελληνες, 4 μάθετε μὴ ἀπιστεῖν. τὴν γὰρ ψυχὴν 5 γεννητὴν καὶ ἀθνάνατον ὑπὸ θεοῦ γεγονέναι πιστεύσαντες, κατὰ τὸν Πλάτωνος λόγον, χρόνῳ· μὴ ἀπιστήσητε, ὡς [6 καὶ] τὸ σῶμα ἐκ τῶν αὐτῶν στοιχείων σύνθετον γενομενον δυνατὸς ὁ θεὸς ἀναβιώσας ἀθάνατον ποιεῖν. ἐ 7 τὸ μὲν δυνατὸς, τὸ δὲ ἀδύνατος ῥεθήσεται περὶ θεοῦ. ἡμεῖς ἔν καὶ σῶμα 8 ἀνιστασθαι πεπιστεύκαμεν. εἰ γὰρ φθείρεται ἀλλ' οὐκ 9 ἀπόλλυται, τότε γὰρ τὰ λείψανα 10 γῆ ὑποδεξαμενη τηρεῖ· καὶ δίκην σώρε 11 πιαινόμενα, καὶ τῷ γῆς λιπαρωτέρῳ συμπλεκόμενα, ἀνθεῖ. καὶ τὸ μὲν σπαρὲν κόκκος γυμνὸς σπείρεται, 12 κελεύσματι δὲ τοῦ δημιουργήσαντος θεοῦ θάλλων ἡμφιεσμένος καὶ ἔνδοξος ἐγείρεται, ἐ πρότερον εἰ μὴ ἀποθανὼν λυθῇ καὶ 13 συμπαγῇ. ὥστε τὴν ἀνάστασιν τοῦ σώματος ἐ μάτην πεπιστεύκαμεν. ἀλλ' εἰ καὶ λύεται πρὸς καιρὸν διὰ τὴν ἀπ'

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1 *Hœsch.* non habet. 2 Καταπεπήγασι *Hœsch.* male. 3 Isc. ἀγγέλων. *Hœsch.* πατέρων χωρόν. 4 Sic. *Hœsch.* ſed perperam MS. μαθηταί. 5 Ita uterque Cod. et MS. & impreſſ. mendoſe tamen. Legendum ἀγεννητον. Plato enim in Phædro (unde hoc deſumptum) animam docet αὐτοκίνητον eſſe, & proinde concludit: ἐξ ἀνάγκης ἀγενητον τε καὶ ἀθάνατον ἡ ψυχὴ ἂν εἴη. Atque ideo forſan pro χρόνῳ hîc legendum φαίδρῳ. 6 Sic *Hœsch.* ſed omittit MS. 7 Sic *Hœsch.* MS. perperam τῷ 8 Ita *Hœsch.* MS. ἀνίσασθε 9 Sic *Hœsch.* MS. vero ἀπόλλυτε. 10 Ὑποδεχομένη ἡ γῆ *H.* 11 *Hœsch.* γενόμενα. 12 In MS. *Hœsch.* κελεύσιμίν τι. 13 Συμμιγῇ *Hœsch.*

ἀρχῆς

ἀρχῆς γενομένην παρακοὴν, ὡς εἰς χωνευτήριον εἰς γῆν καθίσταται πάλιν ἀναπλασθησόμενον. ὁ τοιοῦτον ἀνιχνάμενον, ἀλλὰ καθαρὸν καὶ μηκέτι [1] φθειρόμενον. [2] καὶ " ἑκάστῳ σώματι ἡ ἰδία ψυχὴ ἀποδοθήσεται, τοῦτο ἐπενδυσαμένη ἐκ ἀνιαθήσεται, ἀλλὰ συνχαρήσεται καθαρὰ καθαρῷ παραμείνασα. [3] ὡς ἐν τῷ κόσμῳ [4] νῦν δικαίως συνοδεύσασα, καὶ μὴ [5] ἐπίβουλον ἐκ πᾶσιν ἔχουσα, μετὰ πάσης ἀγαλλιάσεως ἀπολήψεται. οἱ δὲ ἄδικοι οὐκ ἀλλοιωθέντα τὰ σώματα, οὐδὲ παθοῖς ἢ νόσου μεταςάντα, οὐδὲ ἐνδοξασθέντα ἀπολήψονται. ἀλλ' ἐν οἷς νοσήμασιν [6] ἐτελεύτων, καὶ οἵοις ἐν ἀπιςίᾳ γεγένηνται, τοιοῦτοι πιςῶς κριθήσονται. πάντες γὰρ δίκαιοί τε καὶ ἄδικοι ἐνώπιον τοῦ θεοῦ λόγον ἀχθήσονται. τούτῳ γαρ ὁ πατὴρ την κρίσιν πᾶσαν δέδωκε· καὶ αὐτὸς βελὴν πατρὸς ἐπιτελῶν [7] κριτὴς παραγίνεται, ὃν Χριςὸν προσαγορεύομεν· οὐδὲ γαρ Μινὼς καὶ Ῥαδάμανθος κριταὶ οἱ καθ' ὑμᾶς Ελληνες, ἀλλ' ὃν ὁ θεὸς καὶ πατὴρ ἐδόξασε, περὶ ὃ ἐν ἑτέροις λεπτομερέςερον διελθλύθαμεν πρὸς τὰς ἐπιζητοῦνταις τὴν ἀλήθειαν. ἕτος τὴν πατρὸς εἰς πάντας δικαιοκρισίαν ποιούμενος, ἑκάςῳ κατὰ τὰ ἔργα παρεσκεύασε τὸ δίκαιον. ὃ κρίσει παράσαντες οἱ πάντες ἄνθρωποί τε καὶ ἄγγελοι καὶ δαίμονες μίαν ἀποφθέγξονται φωνὴν, ἥτως λέγοντες· ΔΙΚΑΙΑ ΣΟΥ Η ΚΡΙΣΙΣ. ἧς φωνῆς τὸ ἀνταπόδομα ἐπ' ἀμφοτέροις ἐπάγει τὸ δίκαιον. τοῖς μὲν εὖ πράξασι [8] δικαίως τὴν ἀΐδιον ἀπόλαυσιν παρασχόντος, τοῖς δὲ τῶν φαύλων ἐργασαῖς τὴν αἰώνιον κόλασιν [9] ἀπονείμαντος. καὶ τούτοις μὲν τὸ πῦρ ἄσβεςον διαμένει καὶ ἀτελεύτητον, σκώληξ δέ τις ἔμπυρος, μὴ τελευτῶν, μηδὲ σῶμα διαφθείρον, [10] ἀπαύςῳ δὲ ὀδύνῃ ἐκ σώματος ἐκβράσσων παραμένει. τούτους οὐχ ὕπνος [11] ἀναπαύσει, ὁ νὺξ παρηγορήσει, ὁ

1 Sic *Hoesch.* Nam MS. habet φθερόμενον. 2 Ως MS. 3 Ω *Hœsch.* 4 Ισ. σὺν [vel ἐν] δικαιοσύνῃ ὁδεύσασα. 5 Potius ἐπήβολον. 6 Sic *Hoesch.* At MS. ἐτελεύτον. 7 MS. κριτήρ. 8 Ισ. δικασοῦ. 9 Sic *Hoesch.* At MS. ἀπονήμαντ⊖. 10 Sic *H.* In MS. ἀπαύσως. 11 Sic *H.* MS. ἀπαύση.

θάνατος

θάνατος τῆς κολάσεως ἀπολύσει, ἡ παράκλησις συγγενῶν μεσιτευσάντων ὀνήσει. ἡ γαρ ἔτι δίκαιοι ὑπ' αὐτῶν ὁρῶνται οὐδὲ μνήμης γίνονται ἄξιοι. μόνοι δὲ οἱ δίκαιοι δικαίων μεμνήσονται ἔργων, δι' ὧν ἐπὶ τὴν ἐράνιον βασιλείαν κατήντησαν. ἐν ᾗ οὐχ ὕπνος, οὐ λύπη, οὐ φθορὰ, οὐ φροντὶς, οὐδὲ νὺξ, οὐδὲ ἡμέρα χρόνῳ μετρεμένη, οὐχ ἥλιος ἀνάγκη κύκλον ἑρανῦ [1] δρόμῳ ἐλαυνόμενος, [2 οὐκ ἄγγελοι] ὡρῶν μέτρα ἢ κέντρα πρὸς εὔγνωσων ἀνθρώπων βίον διαμετρέμενα [3] ὁροθετῦντες. ἡ σελήνη φθίνουσα ἢ αὔξουσα, ἢ τροπας καιρῶν [4] ἐπάγουσα, οὐχ ὑγραίνουσα γῆν. οὐδὲ ἥλιος ἐπικαίων, οὐκ ἄρκτος στρεφομένη, οὐκ Ωρίων [5] γεννώμενος. οὐκ ἄστρων πλάνη ἐνάριθμος, ἡ δύσβατος γῆ, οὐδὲ δυσεύρετος παραδείσου αὐλὴ, οὐδὲ δεινὸν θαλάσσης φρύαγμα [6] κωλύον ἐπιβάντα πατεῖν, εὔβατος δὲ καὶ αὕτη τοῖς δικαίοις γενήσεται, ὅτε τῦ ὑγρῦ στρεμένη [7 ἡδὲ τοῦ στερρῦ, διὰ τὸ κῦφον τοῦ [8] ἰσχνῦ πατεμένη.] οὐκ ἑρανὸς ἀοίκητος ἀνθρώποις, οὐδὲ τότε [9] ὁδὸς ἀνεύρετος. ἡ γῆ ἀνέργαστος, οὐδὲ ἀνθρώποις ἐπίπονος, [10] αὐτοματὶ δὲ φύουσα καρπὸς πρὸς εὐκοσμίαν [11 εἰ προσάξει ὁ δεσπόζων.] ἡ θηρίων γένησις πάλιν, οὐδὲ [12] τῶν λοιπῶν ἐκβρασσαμένη ὑσία. οὐδὲ γαρ [13] ἄνθρωπος πάλιν γεννᾷ, ἀλλ' [14] ὁ μετὰ δικαίων εἰρηθμὸς διαμένει ἀνέκλειπτος, ἅμα δικαίοις ἀγγέλοις καὶ πνεμασι [15] θεῦ, καὶ τω τότε λόγῳ· ὡς τῶν δικαίων χορὸν

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1 Sic *Hoesch.* Sed MS. δρόμον. 2 *H.* non habet. 3 *H.* ἑροθετῦντος. 4 Sic *H.* At MS. ἀπάγουσα. 5 Isσ. θηρώμενος. vel γυναιμανής. 6 In MS. κωκύον. 7 Totum hoc incluſum ab impreſſo abeſt. 8 Isσ. ἴχνεος. 9 *H.* τῆς ἀναβάσεως ἡ ὁδός. 10 *H.* αὐτομάτη. 11 Incluſa *H.* non habet. Pro εἰ vero in MS. eſt ἤ. 12 Τῶν λοιπῶν ζώων ἐκβ. *H.* 13 Ανθρώποις *H.* 14 Ο τῶν δικαίων *H.* Ἴσ. ὁ μεν τῶν. 15 Quæ ſequuntur primo ad fidem & formam MS^{i}. codicis (mendoſi ſatis) expreſſimus. (Hoc excepto quod in locis extra dubium poſitis & dictiones ſigillatim deſcripſimus & accentus cuique ſuos adſcripſimus. Quæ utraque in ſcripto codice deſiderantur.) Deinde emendationem noſtram (ſi forte) ſubjecimus.

ἀνδρῶν

ἀνδρῶν τε καὶ γυναικῶν· ἀγήρως καὶ ἀφθάρτως διαμένει ὑμῶν.

ΕΝ ΒΙΩ

τὸν ἐπὶ ταῦτα παραγόμενον θεόν. διὰ της τε εὐτακτε νομοθεσίας συνοις καὶ πᾶσα ἡ κτίσις ἀδιάλειπτον ὕμνον ἀνοίσει ἀπὸ τῆς φθορᾶς εἰς ἀφθαρσίαν διαυγη καὶ καθαρσιν πνεύματος δεδοξασμενη. ἐκ υπαναγκης δεσμος συνχοθήσεται, ἀλλὰ ἐλευθεριαζωσα ἐκεῖσιον τον ὕμνον ἅμα τες ἐλευθερωθεῖσιν πάσης δουλίας ἀγγέλοις τε καὶ πνεύμασιν καὶ ἀνθρώποις αἰνέση τὸν πεποιηκότα τέτες ἐὰν πίσθέντες Ελλινες καταλείψεται τὴν ματαιότητα τῆς ἐπιγενες καὶ χρημάτων σπορε σοφίας, καὶ μὴ περὶ λέξεις ῥημάτων ἀσχολύμενοι τον νοῦν εἰς πλανησοινωνης ἀλλὰ τοῖς θεοπνεύσοις προφήταις καὶ θεῦ καὶ λόγοις ἐξηγηταῖς ἐνχειρίσαντες τὰς ἀκοὰς θεῷ πιστεύσεται ἔσεσθαι καὶ τέτων κοινωνοὶ καὶ τῶν μελλόντων τευξασθαι ἀγαθῶν, ἀμετρητε ἐρανε ἀνάβασιν καὶ τὴν ἐκεῖ βασιλείαν ὄψεσθαι φανερῶς Ψ θεος α νῦν σεσιώπηται. ἃ ἅτε ὀφθαλμὸς εἶδεν, ἅτε ἓς ἤκεσεν, ἅτε ἐπὶ καρδίαν ἀνθρώπε ἀνέβη ὅσα ἡτοίμασεν ὁ θεὸς τοῖς ἀγαπῶσιν αὐτόν· ἐφοις ανευρω ὑμᾶς ἐπὶ τέτοις κρινω παρεκασα βοατο τέλος ἀπάντων. ὥσε καὶ τω τα ευπεποιηκότι τὸν βίον λήξαντος δε τε τέλος ἐξόκηλαν τη προς κακίαν ανοητοι οι προσθε πονοι ἐπὶ τῇ καταστροφῇ τε δράματος ἐξαθλω γενομενω. τοτε χειρον καὶ ἐπισεσυρμένως βιώσαντι πρότερόν ἐστιν ὕστερον μετανόησαντι πολλῷ χρόνῳ πολιτείαν πονηρὰν ἐκνικῆσαι τῷ μετὰ τὴν μετάνοιαν χρόνῳ ἀκριβείας δὲ δεῖται πολλῆς ὑπὲρ της μακραν οσω πεποιηκόσι

ΜΕΝ

σώμασι διαίτης χρια καὶ προσοχης πλείονος ἐστιν δυνατὸν γὰρ ἴσως ἀθρόως ἀποκόψαι παθης προφ . . . ἀλλὰ μετὰ θεῦ δυνάμεως καὶ ἀνθρω . . . . . καισιας καὶ ἀδελφῶν βοηθείας καὶ εἰλικρινες μετανοίας καὶ συνεχης μελέτης κατορθῶται. Καλὸν μὲν τὸ μὴ ἁμαρτάνειν, ἀγαθὸν δὲ καὶ τὸ ἁμαρτάνοντα μετανοεῖν· ὥσπερ

ἄριστον

ἄριστον τὸ ὑγιαίνειν ἀεὶ, καλὸν δὲ καὶ τὸ ἀνασφαλὲς μετὰ νόσον.

τῷ θεῷ δόξα.

Eorum quæ in præcedentibus aliquot paginis ad fidem MS. hiulca & corrupta habentur emendatio.

ἅμα δικαίοις ἀγγέλοις καὶ πνεύμασι θεῦ καὶ τῷ τότε λόγῳ. ὡς τῶν δικαίων [1] χορὸν ἀνδρῶν τε καὶ γυναικῶν ἀγήρως καὶ ἀφθάρτως [2] διαμένειν ὑμνοῦντα τὸν ἐπ' ἰταῦτα προσαγόμενον θεὸν, διὰ τῆς ἐν τῷ βίῳ εὐτάκτου νομοθεσίας· σὺν οἷς καὶ πᾶσα ἡ κτίσις ἀδιάλειπτον εἰς ἀφθαρσίαν δι' αὐγῆς καθαρᾶς πνεύματος δεδοξασμένη, οὐχ ὑπ' ἀνάγκης δέσμοις συσχεθήσεται, ἀλλὰ [ἐν] ἐλευθερίᾳ [3] ζῶσα [δι'] ἐκάστου ὕμνου ἅμα τοῖς ἐλευθερωθεῖσιν [ἀπὸ] πάσης δουλείας ἀγγέλοις τε καὶ πνεύμασι καὶ ἀνθρώποις αἰνέσει τὸν πεποιηκότα [4] τοιούτους· ἐὰν πεισθέντες Ἕλληνες καταλείψεσθε τὴν ματαιότητα τῆς [5] ἐπιγείου καὶ χρηματοποιοῦ σοφίας· καὶ μὴ περὶ λέξεις ῥημάτων ἀσχολούμενοι, τὸν νοῦν [6] εἰς πλάνης οἶμον ὠθῆτε. ἀλλ' εἰ τοῖς θεοπνεύστοις προφήταις καὶ θείῳ λόγῳ ἐξηγηταῖς ἐγχειρίσαντες τὰς ἀκοὰς θεῷ πιστεύσητε, ἔσεσθε καὶ τούτων κοινωνοὶ, καὶ τῶν μελλόντων ἐντεύξεσθε ἀγαθῶν, ἀμέτρου τε ἀρρήτου ἀνάβασιν καὶ τὴν ἐκεῖ βασιλείαν ὄψεσθε φανερῶς. καὶ γνώσεσθε ὅσα νῦν σεσιώπηται. ἃ οὔτε ὀφθαλμὸς εἶδεν, οὔτε οὖς ἤκουσεν, οὔτε ἐπὶ καρδίαν ἀνθρώπου ἀνέβη ὅσα ἡτοίμασεν ὁ θεὸς τοῖς ἀγαπῶσιν αὐτόν. ἐφ' οἷς ἂν εὕρω ὑμᾶς, ἐπὶ τούτοις κρινῶ παρ' ἕκαστα, βραχὺ τὸ τέλος ἁπάντων. ὥστε τῷ τε εὖ πεποιηκότι τὸν βίον, λέξαντος δὲ τοῦ τέλους ἐξοκλάσαντι πρὸς κακίαν, ἀνόνητοι οἱ πρόσθε πόνοι ἐπὶ τῇ καταστροφῇ τοῦ δρα-

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1 Isσ. χορὸς. 2 Διαμένει ὑμνῶν. 3 Isσ. ἄδουσα ἑκάστου τὸν ὕμνον. 4 Isσ. τούτους. 5 Arm. ἐπὶ γενοῦς καὶ χρημάτων ἀπόρου 1 Hiat aqua hæret: ἴσ. ἐμπαροινῆτε, εἰς πλάν. οἰνώσητε.

ματος

ματος ἐξάθλῳ γενομένῳ τῷ τε χεῖρον καὶ ἐπισεσυρμένως βιώσαντι πρότερον, ἔσιν ὕσερον μετανοήσαντι πολλὰ χρόνῳ πολιτείαν πονηρὰν ἐνικήσαι τῷ μετὰ τὴν μετάνοιαν χρόνῳ. ἀκριβείας δὲ δεῖται πολλῆς, ὥσπερ τοῖς μακρᾷ νόσῳ πεπονηκόσι σώμασι διαίτης χρεία καὶ προσοχῆς πλείονος. ἔσι μεν ἀδύνατον γὰρ ἴσως ἀθρόως ἀποκόψαι πάθοις τροφήν. ἀλλὰ μεν θεῦ δυνάμεως, καὶ ἀνθρώπων ἱκεσίας, καὶ ἀδελφῶν βοηθείας, καὶ εἰλικρινῆς, ματανοίας, και συνεχῆς μελέτης κατορθῶται. [2] καλὸν μεν τὸ μή ἁμαρτάνειν, αγαθὸν δὲ καὶ τὸ ἁμαρτάνοντα μετανοεῖν. ὥσπερ ἄριςον τὸ ὑγιαίνειν ἀεὶ, καλὸν δὲ καὶ τὸ ἀνασφάλαι μετὰ νόσον.

Τῷ Θεῷ δόξα.

Joſephi, ex opere inſcripto, contra Platonem, De Cauſa Univerſi, de loco in quo juſtorum pariter & injuſtorum animæ continentur.

ATque hæc quidem Dæmonum ſedes eſt. De inferis autem, ubi juſtorum pariter & injuſtorum animæ continentur, neceſſe eſt ut dicamus. Infernus ideo (ſive Hades) locus eſt in rerum natura plane incultus, ſubterraneum ſpecus, in quo lux mundi non reſplendet: atque ideo locum hunc nullo lumine illuſtratum æternis tenebris horreſcere neceſſe eſt. Regio hæc animabus pro carcere, deſignata eſt, cui Angeli cuſtodes præfecti ſunt, juxta ſua cujuſque opera debitas cuique pro more pœnas diſtribuentes. In hac autem regione locus quidam in receſſu ſeparatus exiſtit, lacus ignis inexſtinguibilis. In quem nondum quempiam projectum novimus: præparatus tamen eſt in decretorium illum diem, ubi ſuſpicienda juſti judicii declaratio omnibus pro merito exhibeatur. Et injuſti Deoque immorigeri, & qui opera vana manibus hominum fabrefacta idola, ceu Deum coluerunt, ut hujuſmodi ſcelerum auctores ad æternum ſupplicium damnentur. Juſti autem incorruptibili & indefectibili regno potiantur. Qui nunc quidem apud inferos concluſi ſunt, non eodem tamen cum improbis loco. [3] Unus ſiquidem eſt in hanc regionem deſcenſus, cujus portæ Archangelum

angelum una cum præſidio præfectum credimus; quam quidem portam ubi primum prætervecti ſunt qui ab angelis animarum præfectis eo deducuntur, per eandem viam non ulterius procedunt. Sed juſti in dexteram, Angelis præfectis aliis facem preferentibus aliis à tergo hymnos decantantibus, in locum lucidem deducuntur. Ubi quotquot ab orbe condito juſti fuere, vitam degunt, neceſſitate nulla conſtricti, ſed bonorum quæ ibi conſpiciuntur viſione indeſinenter fruentes * * & novorum ſemper exſpectatione lætabundi; atque illa his præſentibus potiora judicantes. Et hic quidem locus non illis laborem creat, non laſſitudinem: non illic æſtus, non frigus, non tribulus: ſed qui ſe coram conſpiciendum præbet patrum juſtorumque aſpectus molliter ſemper ſubridens æternam poſt has ſedes in cœlo requiem & reſurrectionem exſpectantium. Hunc autem locum Sinum Abrahæ vulgo vocamus. Impii vero ab Angelis tortoribus in ſiniſtra rapiuntur, non illi quidem ſponte ſua procedentes, ſed captivorum inſtar per violentiam tracti. Ad quos Angeli præfecti munus ſuum obeuntes mittuntur, qui probris eos impetentes, & aſpectu torvo increpantes, ad ima tartari protruduntur. Quos inter agendum præfecti trahunt uſque dum gehennæ propiores facti qui in proximis conſiſtunt ebullientis aquæ murmur continuo exaudiunt, neque ab æſtus fumo immunes ſunt. Ex hoc autem propiori intuitu tremendum illud & immane quantum flavum ignis ſpectaculum contuentes, præ futuri judicii exſpectatione obſtupeſcunt, etiam nunc *potentia* puniti. Quin & illic etiam patrum chorum juſtoſq; proſpiciunt, & ob hoc ipſum vel maxime torquentur. Ingens enim & altum chaos *medios dirimit*, quod nec pium quenquam compaſſione affectum admittat, nec impium tranſire auſum ſuſcipiat. Atque hæc quidem de inferis hiſtoria ſic ſe habet, ubi ſingulorum animæ uſque ad tempus à Deo præfinitum cohibentur; qui tum reſurrectionem omnium facturus eſt: non animas in alia corpora transferendo, ſed ipſa corpora reſuſcitando. Quæ cum vos Græci ſoluta morte videatis fidem non adhibetis.

tantum non

in medio interjectum eſt

jam tandem infidelitatem dediſcere.

betis. Diſcite *autem non credere deſinere.* Qui enim animam ex Platonis ſententia, ingenerabilem & immortalem à Deo factam credidiſtis, procedente tempore non diffidetis quin & corpus etiam ex eiſdem elementis compactum potens ſit Deus, vitam ei rurſus largiendo, immortale efficere. Neque enim unquam de Deo dicetur, quod hoc poſſit, illud non poſſit. Nos igitur & corpus etiam reſurrecturum credidimus, quod utcunque corrumpatur non tamen perditur: reliquias ſiquidem ejus terra ſuſcipiens eas cuſtodit; quæ ſeminis inſtar pinguefactæ & una cum fertilioribus terræ partibus ſubactæ refloreſcunt. Et id quidem quod ſeminatur nudum granum ſeminatur ſed creatoris Dei juſſu revireſcens veſtitum & ornatum reſurgit; neque tamen prius quam intermortuum diſſolvatur & ſubigatur. Atque ideo reſurrectionem corporis non gratis credidimus: quod licet propter inobedientiam illam primitus factam ad tempus ſolvatur, at in terram tanquam in fornacem de novo rurſus formandum projicitur. Non quale antea reſurrecturum, ſed purum nec in poſterum corrumpendum. Et ſua cuique corpori anima reddetur, quo induta non ultra triſtabitur, ſed munda mundo cohabitans collætabitur; & exultatione plena reſumet illud quocum in mundo juſte converſata fuerat, & in omnibus operum particeps habuerat. Improbi autem nec *in melius* mutata corpora, nec à dolore & ægritudine aliena, nec glorificata recipient: ſed quibus morbis gravati à vivis exceſſerant. & quales quales in infide-

ad tribunal judicii ſiſtentur. Univerſi

litate ſua fuerant, tales plane judicabuntur. Omnes enim juſti pariter & injuſti coram Deo Verbo ſiſtentur: illi ſiquidem omne judicium commiſit pater, atque ipſe voluntatem patris exſequens judex comparet, quem Chriſtum vocamus. Neque enim, qui apud vos Græcos, Judices hîc ſunt Minos aut Rhadamanthus, ſed quem Deus & Pater glorificavit. de quo à nobis alias diſtinctius actum eſt, in eorum gratiam qui veritatem inveſtigant. Hic juſtum patris judicium in omnes exercens, unicuique ſecundum opera ſua quod æ-

ad ſententiam

quum eſt ordinavit. Cujus judicio omnes pariter homines, Angeli, Dæmoneſque hanc una vocem tollent, ſic dicentes, Juſtum eſt Judicium tuum. Cujus acclamationis mutua hinc inde reditio utrique parti quod juſtum eſt infert: iis qui benefecerunt æternam fruitionem conferente judice, malorum vero cultoribus æternam pœnam diſtribuente. Atque hos quidem non extinguibilis ignis & indeſinens manet, ſed & vermis quidam igneus, non moriens, nec corcorrumpens corpus, ſed interminabili dolore è corpore prorumpens perdurat. Non illos ſomnus in requiem coget, non nox ſolabitur, non mors ſupplicio liberabit, non affinium mediatorum conſolatio juvabit. Neque enim juſti jam ab ipſis ulterius videntur, neque digni ſunt qui in memoria habeantur. Soli autem juſti bonorum operum memores erunt, per quæ in cœleſte regnum provecti ſunt: In quo nec ſomnus, nec dolor, nec corruptio, nec cura, non nox, non dies tempore menſuratus, non ſol ex neceſſitate per cœli orbitam curſu circumactus. non Angeli qui tempeſtatum ſpatia & cœli cardines ad vulgo notos humanæ vitæ uſus dimenſa diſponant. Non luna deficiens aut creſcens, aut vices temporum inducens: nec illa terram humectans, nec ſol adurens. Non circumvolvitur Arctus: non venatur Orion: non vagus aſtrorum curſus numeros ſuos abſolvit: ſed terra calcatu facilis & Paradiſi atria inventu haud difficilia. Non horrendus maris fremitus conſcendentem prohibit quo minus pedibus calcet: nam & ipſum juſtorum greſſus facile admittet; nec humore ſuo deſtitutum, nec firmitate ſed per impreſſa leviter veſtigia proculcatum. Non cœlum ab humanis incolis imparatum, nec qua illuc aſcenditur via impoſſibilis inventu. Nec inculta *jacebit* terra, nec tamen ab hominibus elaborata. Sed ſponte ſua fructus in ornamentum *univerſi* proferit; ſi quidem Dominus ita juſſerit. Nulla ultra ferarum genitura, nec reliquorum natura animantium in prolem prorumpit. Neque enim homo jam ulterius gignit; ſed juſtus piorum numerus indeficiens perdurat, una cum Angelis & Spiritibus Dei juſtis, & *Patre* Verbi. Adeo ut juſtorum chorus virorum pariter & feminarum ab omni prorſus

prorſus ſenio & corruptione immunis permaneat, Deum hymnis celebrans, qui beneficio legum in vita recte inſtituta latarum, eos ad hoc ſtatus perduxit. Et cum his una universa etiam creatio indeſinentem proferet hymnum *ut quæ* à tollet corruptione ad incorruptionem deducta, & ſpiritus luſtratione glorificata, nullis neceſſitatis vinculis conſtricta tenebitur, ſed in libertatem aſſerta per ſpontaneum hymnum, una cum Angelis Spiritibuſque & hominibus ab omni prorſus ſervitute liberatis. Creatorem ſuum celebrabit. Si ergo vos Græci his perſuaſi, terrenæ iſtius & quæſtuoſæ ſapientiæ vanitati nuncium remittatis, nec circa dictionum argutias occupati intellectum veſtrum in erroris ſemitam impellatis: ſed inſpiratis cœlitus prophetis & divini verbi interpretibus aures veſtras accommodantes Deo credatis, eritis & vos horum participes, & quæ futura ſunt bona conſequemini. Immenſi cœli aſcenſum, & quicquid illic regni eſt aperte videbitis: & ea cognoſcetis qui nunc reticentur. Quæ nec oculus vidit, nec auris audivit, nec aſcendit in cor hominis quæ Deus præparavit diligentibus ſe. Communis omnium finis continuo clamat, in quibuſcunque tandem vos invenero, in illis etiam judicabo. Adeo ut etiam recte vitam inſtituenti, fine autem ingruente in vitium effuſo, inutiles & fruſtra antea ſuſcepti labores, ut qui deducta ad cataſtrophen fabula exors præmii dimittitur. Illi autem, qui pejus etiam & diſcincte nimis antea vixerit, licebit poſtea pœnitentiam agenti de male exactæ vitæ curſu diutius eo quod poſt pœnitentiam reliquum temporis ſpatio victoriam referre. Sed hoc ut fiat diligentia plurima opus habet: non aliter quam corporibus quæ diuturno morbo laborarunt diæta neceſſaria eſt & major cura adhibenda. Forſan enim vix poſſibile eſt confertim & uno quaſi ictu alimenta morbi præcidere. Sed per Dei poteſtatem, & hominum vicinitatem, & fratrum auxilium, & pœnitentiam ſynceram, & curam continuam felici tandem exitu emendatur. Optimum quidem eſt non omnino peccare, bonum vero & peccantem reſipiſcere: ſicut optimum eſt ſemper ſanum eſſe, bonum vero & poſt morbum revaleſcere. Deo Gloria & potentia in ſecula ſeculorum. Amen.

N° V.

N° V.

Dr. THOMAS SMITH's *laſt Letter to the Publiſher, tranſcribed from a MS. in the Publiſher's Poſſeſſion, intituled,* A Collection of Letters, in number CLXVIII, written to myſelf by the Reverend and Learned Dr. Thomas Smith, beginning Nov. 9, 1703, and ending April 1, 1710.

SIR,

I WRITE this to acknowledge the receipt of your letter of the 25 March. The inſcription * in it I do not believe to bee genuine; but of this I am not able to write more, by reaſon of the utter exſtinction of my right eye, and the weakneſs of my left: which forbids mee to make uſe of it either in reading or writing for above 4 or 5 minutes at a time: which, together with an inflammation in my other uſeleſſe eye, gives mee extreme great paine, and that continued; ſo that I am forced, to obtain ſome kind of eaſe, to lye upon my bed a great part of the day. God grant mee patience under, and ſubmiſſion to his heavenly will. So that now at laſt there is like to bee a fatal interruption put to our correſpondence, on my part at leaſt; and therefore I would not have you give your ſelfe the trouble of writing to mee, til you heare from me firſt, either by a ſhort letter of my owne, or by the hand of a friend.

In the midſt of all my paine and anguiſh, I thanke God, I am not ſick, and find no ſymptoms of approaching death upon mee: yet conſidering my great age, having now almoſt run out the threeſcore and twelvth yeare of my life (for I was born 3 June 1638.) I conclude I have not long to live, and that there may bee ſome unforeſeen ſudden change, which may carry me off.

* I have publiſhed this inſcription ſince in the 5th vol. of Leland's Itin. p. 137 H.

My

My Br. told mee this weeke, that Mr. Fiſher acquainted him, that his kinſman, Dr. Hudſon, would be in London very ſpeedily. If ſo, deſire him to come and viſit mee; for I heartily deſire to ſee him and diſcourſe with him.

I cannot hold out any longer. I conclude this, I feare my laſt, letter to you with my prayers to our gracious and merciful God to bleſſe you with long life, vigorous healthe, and a perpetual uſe of your eyes. *Diſce meo exemplo.*

I am, Sir,

London, 1 April 1710.

Your affectionate friend and humble ſervant,

THOMAS SMITH.

This is the laſt letter I received from this Great Man; *for he died at London the* 11th * *of May following, between* 3 *and* 4 *of the clock in the morning, as I was informed by my friend, the reverend and learned Mr. Hilkiah Bedford, and was buried (as I was informed by the ſame gentleman) on Saturday night immediately following in St. Anne's church between* 10 *and* 11 *o'clock.*

* Thurſday.

THOMAS HEARNE.

N° VI.

E Coll. MSS. Smithianis penes nos, Vol. XCIII. p. 143.

Archbiſhop Laud to Mr. John Greaves of Merton College.

SIR,

YOUR kind letter of November 15, came not to my hands, 'til the beginning of this weeke; elſe you had certainly received my anſwer and thanks for your kindnes ſooner.

I ſee you have taken a great deale of care about the coines I ſent to the Univerſity. And I hope, as you have ſeen the laſt I ſent, with others, placed in their ſeverall cells

cells reſpectively; ſo you have alſo ſeen their names written into the booke, that both may be perfect and agree together.

For the placing of them I leave that wholly to the univerſity, whoſe they now are: yet I muſt needs approve of the way of placing them, which you have thought on. Nor can there be any objection againſt it, but that which you have made about the M. S. Commend my love to Dr. Turner and Mr. Pocock; and when you have weighed all circumſtances, whatſoever you ſhall pitch upon ſhall ſerve, and pleaſe mee. So to God's bleſſing I leave you, and reſt.

Your unfortunate poor friend

Tower, Janua. 13, $164\frac{1}{2}$. W. CANT.

N° VII.

E Coll. noſtris MSS. Vol. I. p. 99.

Mr. Timothy Nourſe's Donation to the Univerſity of Oxford.

Mr. Timothy Nourſe, who dyed July 21ſt 1699, gave to the Bodlejan Library by his laſt Will and Teſtament, as followeth, in theſe words:

Newent in Glouc. ſſ.

ITEM, I give to the Bodlejan library in Oxford all my collection of coins and medalls, whether of gold, ſilver, or copper, being in all about five or ſix hundred pieces, in thankfull remembrance of the obligations I have to that famous univerſity.

This was faithfully tranſcribed out of the ſaid will by me

ABRA. MORSE,
Rector de Huntley in Com. Glouc.

Gould

Gould peeces	2.
White	121.
Copper	409.
In all	532.
A braſs buckle.	

That which is above written is a copy of the paper, ſent by Mr. Morſe, now in the publick library.

N° VIII.

A Note of the Divinitie School and Librarye in Oxford.

Sent to Mr. Hearne in a letter by his friend the reverend and learned Mr. Thomas Baker, B. D. of St. John's College, Cambridge.

ABOUT the yeere of our Lorde 1478, the divinity ſchool and librarye in Oxford was founded, not by one but many benefactors: for as aperythe in the proctors books, in the ſame yeere a ſtatute or decree was made by the univerſitie, that between the feaſts of St. Luke and All Saynćts, ſolemn dirige and maſſe ſhall be ſounge for the ſoules of John Kemp late cardinall and archbp. of Canterburye, and Thomas Kempe biſhope of London, and that they ſhould be remembered en everye ſermon in Oxford, at Paule's croſſe, and the hoſpitall in London, with this proviſoe annexed, yealding the cauſe of this ſtatute: "Pro- "viſo quod hæc ordinatio vim capiat & effectum, cum "ſumma mille marcarum ad ædificium ſcholarum ſacræ "theologiæ applicand. fuerit plenarie univerſitati Oxon. "perſoluta. Et ſi contingat aliquam porcionem dictæ ſum- "mæ mille mercarum poſt completum ædificium hujuſmodi "remanere, quod portio remanens ponatur in aliqua ciſta, "ad uſum ſcholarium mutuari volentium." And of this money appeareth 200 markes to have been paied, and a bonde of the archpb. taken for the reſt. At the ſame time another ſtatute was made, towching the keepinge, lending, &c. of bookes given to the univerſitie by the duke of Gloceſter. "*Inprimis*, pro firma & perpetua cuſtodia largiſ- "ſimæ & magnificentiſſimæ donationis CXXIX. voluminum "per ſereniſs. principem & dominum inclitiſſimum domi-

" num Humfridum regum filium fratrem & patruum, du-
" cem Gloceſtriæ, comitem Pembruch' & magnum came-
" rarium Ang. noſtræ univerſati, ex ſumma ſua liberalitate
" donatorum, & quorumcunque voluminum in futuris per
" eundem ſereniſſimum principem donandorum, ut fiat unum
" novum regiſtrum, in ciſta quinque clavium reponend."
&c. Alſo thei decreed, that within three dayes of Simon and Judes day, a maſſe of the trinitie, or of our Ladie ſhould be ſonge for hym and his wieffe Elioner. Alſo a chaplein of the Univerſitie was choſen, after the maner of a Bedell, and to hym was the cuſtodie of the librarye committed, his ſtipend—CVI *s.* and VIII *d.* his apparell found hym *de ſecta generoſorum.* Noe man might come in to ſtuddie but graduats and thoes of 8 years contynuance in the univerſitie, excepte noblemen. All that come in muſt firſte ſweare to uſe the bookes well, and not to deface theim, and everye one after at his proceedings muſt take the licke Othe. Howers apoynted when they ſhould come in to ſtuddie, viz. betwene IX and XI aforenoone, and one and four afternoone, the keper geving attendaunce: yet a prerogative was graunted the chancellour Mr. Richard Courtney to come in when he pleaſed, during his owne lieffe, ſo it was in the day-tyme; and the cauſe ſeemeth, that he was the cheiffe cawſer and ſetter on of the librarye; for it folow-eth: " Quam prærogativam ad vitæ terminum conceſſit
" univerſitas in favorem Mri. Rici. Courtnaye nunc can-
" cellarii, cujus temporibus & labore eſt completa domus."
The librarye was buylded by many benefactors, and not by one, for the chaplein was bound under payne of perjurye to remember, " perſonas certas, quæ magis ſunt meritæ," in his maſſes, whoes names are, " Illuſtriſſ. princeps Hen-
" ricus Quartus Rex Ang. & Franc. Sereniſſ. Princeps
" Henricus Princeps Walliæ primogenitus hujus, Illuſtres
" ſibi Fratres, Thomas, Johannes, & Humfredus, Tho.
" Arundell Cant. Archiepiſcopus, Philippus Repinton Lin-
" coln': Epiſcopus, Edm': Comes Marchiæ, & Mr. Richar-
" dus Courtney." More rules and ordinances are ſett downe towching this librarye, but theis be the cheefeſte.

Worthy

Worthy Sir,

That I might not ſend you an empty letter, I have copied out this paper. How it agrees with your accounts, or whence it was taken, I cannot ſurely ſay, but it was copied out (with other antiquities) by Matthew Stokys a publick notary, and regr.— of this univerſity under Qu. Eliz. and ſooner. I ſuſpect it to be taken from archbiſhop Parker's MSS. where I remember to have met with ſomewhat very like it, if not the ſame. ———

N° IX.

E Coll. noſtris MSS. Vol. LVII. p. 164. Collections relating to the Div. Shcoole and Library of the Univerſity of OXFORD, written by Dr. LANGBAINE.

THO. Kemp Epiſcopus London. conſtruxit Scholæ Theologicæ Atrium, cathedram, valvas, turiculas, &c. Scholam etiam voltavit, & lapide quadrato abſolvit anno 1476. Ed. 4. 16.

Redintegravit hoc opus Epiſcopus Lond. inchoatam ante, & derelictum ab Academicis, annos fere 60.

Academici per literas repetunt à rege Latomos, quos Epiſcopus Wintonienſis avocarat, ad perficiendum ædificium Vindeleſoriæ cœptum.

Jo. Tibtoſt comes Wigorniæ & Humfredi Gloc. ſucceſſor, cum eſſet Patavii, libros quoſdam pollicitus eſt Acad. Oxon. quorum indices ad eos miſit, quos illi ad quingentas marcas æſtimarunt. Sed decollatus poſtea, non præſtitit quod promiſit.

Georgius Nevillus Archiepiſcopus Eboracenſis pollicitus eſt, ſe recuperaturum libros comitis Wigorn.

Academia ſcripſit G. Wikham Epiſcopo Winton. ut illis accommodaret cachinas, quarum ope Scholam Theologicam voltis & fornicibus exornarent.

Bibliotheca Oxon. hos habuit Benefactores, Henr. 4. Henr. Principem ejus filium, itemque Thomam, Joannem, Humfredum ejus fratres: Tho. Arundel Archiepiſ. Cant. Philip. Repington Epiſcopum Lincoln. Edm. Comitem Marciæ, Ric. Courtney, Ric. Lichefilde Archidiac. Middleſexiæ.

Humfredus donavit Acad. Volumina 129. Ric. Lichefilde 100 vol.

Anno 1412. conſtituitur capellanus & cuſtos Bibliothæcæ.

Ex Regiſtris publicis Academiæ.

Anno 1449. 24 Oct. deliberatum erat quod fieret reparatio Librariæ ex ſumptibus univerſitatis.

1451. Supplicat venerabili Congregationi, &c. W. Farby quatenus 6 anni in Philoſophia, & 2 in Theologia ſufficiant ei ad effectum, quod poſſit intrare ad Librariam, non obſtante ſtatuto. *Hæc gratia conceſſa eſt, ſub conditione* ☞ *quod ſolvat 4od.*

Eadem gratia conceſſa eſt Tho. Dando, ſub conditione quod cedat magiſtris ſi eis placuerit.

1513. Electio Capellani Univerſitatis per Commiſſarium, Doctores, Magiſtros, & alios.

1513. Supplicat magiſter Adam Kirkebek Capellanus Univerſ. quatenus gratioſe diſpenſetur cum eo, ut non teneatur aperire oſtia librariæ Univerſ. ante horam 12 in diebus feſtis.

Bac. Juris intrabant cum habitu.

1515. Supplicat, &c. D. Tho. *Nicols baccalaureus Juris, quatenus poſſit intrare librariam Univerſ. ſine habitu* cauſa ſtudendi. Hæc gratia eſt conceſſa ſic quod non inducat ſecum plures Scholares, & cauſa non ſit ficta.

1515. Sup. &c. D. Jo. Babham Baccalaureus facultatis Artium, quatenus poſſit intrare librariam Univerſ. ſine habitu ſuo. Conceſſa cum conditione, ut ſolvat 4*d.* ad compoſitionem novæ chartæ.

1555. Electi ſunt quidam ad vendenda ſubſellia librariæ Univerſ.

No X.

E Coll. noſtris MSS. Vol. XLVII. p. 61. Copy of an Original Letter (in the Hands of RICHARD RAWLINSON, M. A. * of St. JOHN'S COLLEGE, OXFORD) relating to the Bells of Briſtol, anno 1643.

To the Right Hon^ble our very good Lord the Lord Piercies theſe preſent at Court.

Right Hon^ble,

UPON receipt of your lordſhip's letters, by which you make claime to the Bells of this cittie, as general of his majeſtie's Artillery, We doe humbly conceive, that yf any ſuch forfeiture were incur'd (as is pretended) yet by agreament on his majeſtie's parte when his forces entered, it was in effect condiſcended unto, that there ſhould noe advantage be thereof taken, but that all things ſhould continue as formerlie without prejudize to any inhabitant. And the bells of each church being (as your lordſhip well knowes) the proper goods of the pariſhioners, are not at our diſpoſall, neither have we to doe with them. All which we humbly ſubmitt to your lordſhip's better judgment, and taking our leaves do reſt

Briſtoll this xxi^th of November 1643.

Your Honor's moſt humbly at comandment,

Humph. Hooke, Maior.
John Gorringry, Alderman.
John Tomlinſon, Alderman.
Rich. Long.
Wi. Jones, Alderman.
Ezekiel Wallis, Alderman.

* The degree of Dr. in the Civil Law was ſince conferred on him by Diploma, in a Convocation of the Univ. of Oxon. on June 12, 1719.

George

George Knight, Alderman.
John Tailer, Alderman.
John Lock, Alderman.
Henry Creſwicke.
William Colſton.

No XI.

E Coll. noſtris MSS. Vol. LXXXVIII. p. 42. In MS. vet. de Officiis Oſney.

FInito Agnus Dei cnollentur Douce, Clement & Auſtin, & poſt miſſam per non magnum ſpacium pulſentur. Et notandum, quod ſemper poſt magnam miſſam pulſetur † Hauctecter, ad completorium Gabriel vel Jon——

Douce, Clement, Auſtin, Hautecter, Gabriel, Joh, nomina campanarum Oſney.

† *Potius*, Hautcleri.

Mr. THOMAS HEARNE at the Concluſion of his Catalogue of Books publiſhed by him, printed at the End of his Edition of *Curious Diſcourſes*, ſpeaks thus of JOHN MORWEN or MORENUS.

INter alios libellos rariſſimos (nec fas eſt hoc præterire) quos pro egregia ſua humanitate mihi muto dedit Thomas Rawlinſonus, Armiger, vigilantiſſimus peritiſſimuſque ille ſupellectilis librariæ collector, nuper reperi Epitaphium Stephani Gardineri Epiſcopi Wyntonienſis, auctore Joanne Morrenno ſive Morwenno, octo ſcilicet paginis conſtans, excuſumque (in 4to.) Londini A. D. 1555. Maria regnante. Simul atque in illud incidere contigit ſumma cum voluptate legi. Nam antea non videram. Nec quidem unquam conſpexit

conſpexit Woodius noſter, utcunque his in rebus diligentiſſimus. Adeo nimirum rarum eſt, ut pro gemma jure merito ſit habendum. Quum vero in eodem præter alia Roperi noſtri mentio fiat, non abs re fore viſum eſt hîc loci carmen integrum inſerere, præmiſſa etiam narratione quam de Morrenno literis mandavit & in lucem publicam edidit Woodius.

ATHENÆ OXON.

Vol. I. col. 67.

JOHN MORWEN, or *Morenus* as he writes himſelf, was a *Devonian* born, admitted Scholar of *Corp. Chr.* Coll. 23 *Feb.* 1535. and afterwards Fellow, and Maſter of Arts, About which time entering into holy Orders, he became noted ſoon after for his profoundneſs in Divinity, and his great knowledge in the Greek tongue, being in the latter end of king Henry 8. Reader thereof in his College, and a private inſtructer of *John Jewell*, though afterwards a hater of his Opinions. In 1551. he was admitted Bach. of Divin. and about the ſame time ſtudied Phyſick, as having no good wiſhes for reformation, which tended to the ruin (as he thought) of the Church. He is ſtiled by a learned * author, not of his opinion, to be *homo Græce doctus, ſed idem Græcorum more leviculus & bibaculus*, &c. Afterwards he was patronized in his ſtudies by Will. Roper, Eſq; whoſe daughter, by *Margaret* his wife (daughter of Sir *Thomas More*) he inſtructed in the Latin and Greek tongues. He hath written ſeveral things, but whether extant, I know not. Among them are,

Epiſtolæ ad D. Will. Roperum.

Epitaphia diverſa.

Opuſcula Græce & Latine. Written with his own hand, and ſaid † to be (though I cannot yet in all my ſearches find them) in the *Bodleian* Library ‡. He alſo tranſlated into Engliſh ſeveral of the Greek and Latin Orations made by

* *Laur. Humph.* in *Vita Joh. Juelli*, p. 25.

† *Rob. Hegge* in *Cat. Schol. & Soc. Coll. C. C. Ox.* MS.

‡ Where I have often ſeen and peruſed them. *H.*

the

Clar. 1551. the ſaid Daughter of *Will. Roper*, as by his Epiſtles it appears. What became of this *John Morwen* when queen Elizabeth came to the crown (if he lived to that time) I cannot tell, unleſs he was received into the family of the ſaid *Roper*, a great lover of learning, and a reliever and comforter of diſtreſſed catholicks.

Reverendi in Chriſto Patris Domini Epiſcopi WYNTONIENSIS doctoris GARDINERI Angliæ Cancellarii Epitaphium, JOANNE MORRENNO Collegii Corporis Chriſti ſocio authore.

LONDINI

Ex ædibus Roberti Cayly. Menſe Novembris, Anno ſalutis 1555.

SUME tibi pullas, & nigras, Anglia, veſtes,
Occidit, heu! lumen, gloria, lauſque tua.
Concidit ingenti luctu decus omne bonorum:
Concidit & virtus non revocanda prece.
Concidit & fidei turris firmiſſima certæ:
Sinceræ vitæ clara columba jacet.
Concidit ingenii cultum ſubtilis acumen:
Jamque minus Muſis roboris eſſe puto.
Jam Charites doctæ, puræque ſolertia linguæ
Interiit, lacerat caſta Minerva genas.
Famaque juſtitiæ totum celebrata per orbem
Conticuit tenebris occuluitque caput.
Vivida præcipiti periit ſapientia lapſu,
Cognitio veri, juraque ſacra ſilent.
Rebus in humanis cecidit prudentia ſagax,
Conſilii inventrix curia mœſta tacet.
Actio civilis dormit cauſæque clientum:
Pactorum cuſtos, juris amicus abit.

Oppreſſis

Oppreſſis pereunt miſeris ſolatia larga.
Unica pauperibus ſpes quoque dempta cadit.
Myſta ſacerdotii charum plorare parentem
Non ceſſat, meminit jam periiſſe ducem.
Dux gregis interiit ſummus, paſtorque diſertus,
Martino ſimilis moribus ingenuis.
Gemma ſacerdotum, pietas, flos, unio pulcher
Depoſuit ſpeciem præſulis interitu.
Exſtinctam queritur divino gutture vocem
Plebs, ad quam fecit plurima verba pius.
Concio demulcens, pandenſque ſecreta ſophias,
Obſtupuit, damno juſſa tacere gravi.
Hunc regina dolet, mundi nitidiſſima ſtella,
Theſaurum credit deperiiſſe ſibi.
Tu quoque cognoſces fidum cecidiſſe, Philippe,
Suaſorem fuit hic dignus amore tuo.
Treſque ſimul reges lugebunt Neſtora magni:
Carolus ex imo pectore planget eum.
Quid procerum memorem curas, animoſque potentum?
Ex quorum numero maximus occubuit.
Triſte quid exponam, ſudans & Palladis agmen?
Cujus in interitu fletibus ora rigat.
Quid jam ſervorum planctus, quos aula patroni
Nutribat, dicam? hos juſta querela tenet.
Jam fortuna premit ſpoliatos dura magiſtro,
Inquirent ſimilem, non tamen invenient.
Hic cancellatus tractavit munia juſte,
Officii cujus pondere nil gravius.
Ad quem confugient viduæ ſuſpiria crebra?
Unde roget vires, ſubſidiumque petat?
Ad quem conditio curret miſeranda pupilli
Se gemino preſſum ſentiet eſſe malo.
Sentiet orbatum duplici ſe ſæpe parente,
Et qui defendat, quique reſervet opes.
Vos fratres tenui degentes ſtamine rerum,
Inductos jam quos Anglia nuper habet,
Flectere nocturno Chriſtum qui tempore vultis,
Amiſſum lachrimis plangite, flete virum.

Tuque petens panes aliena ad limina pauper,
Concuties dentes fruſtula nulla vorans.
Te ſitis, atque fames, te mille pericula lædent:
Centones laceros ferre premere tuos.
Nocturnique gelu torpeſces frigore fævo.
Nullus erit qui te tecta ſubire velit.
Nulla tibi, quæ membra tegat, clementia creſcet,
Proque cibo ventrem ſtringet amara lues.
Quare agite ô Lazari, Chriſtum pulſate gementes
Vocibus aſſiduis, vultibus amnis eat.
Nec finem facito plorandi, deſine nunquam,
Cui baculus dextræ eſt, pocula læva capit.
Proſequere extractam terris oculiſque Tabitham:
Veſtibus oſtendas corpora tecta novis.
Aut Petrum rogita, ut redeat, delapſus ab alto:
Qui laxet duræ vincula rupta necis.
Aut ſi non poſſit fieri, ſed membra cubabunt
Mortua, ſub cineris ſtrata colore novi,
Nec calor ejectus redivivos ſurget in artus,
Mortis at æternæ nox tenebroſa valet,
Funde preces, gemituſque cie, funalia porta,
Stetque tuo gelido plurimus ore liquor.
Plange, Bonære, tuum Stephanum, ſociumque pericli,
Carcer quos firma junxit amicitia:
Plange tuum Jonathan, & flebile dicito carmen,
Theſea deſideras, Pirithoumque tuum.
Deliciæ cecidere tuæ pars maxima lucis,
Dimidium cordis ſcito periſſe tui.
Jamque Eboracenſis ſummo viduatur amico.
Tortoris clauſit quem maleſuada domus.
Tu quoque non minimo luges, Ciſceſtria planctu,
Cui ſunt mœroris pocula plena data.
Et qui poſtremo vigiles perſenſit iniquos,
Jam Dunelmenſis paſtor amara gemit.
His ego Whiteum formoſum cidare jungam,
Quem domini fovit cura benigna ſui.
Tu, Feckname, doles, cujus de pectore verba
Exundant puro dulcia melle magis.

Tuque

Tuque patrem affectu miro comitaris ademptum,
Viscera percussit mors inimica tua.
His etiam adnumerem Chedseum dogmate sanum,
Qui fregit Sathanæ spicula torta manu.
Hæresiarcha tuos conatus, Petre repressit,
Et falsi docuit schismatis esse caput.
Idcirco intravit Mavortia tecta referta
Sordibus, & vili carcere mansit ovans.
Hoc argumento multus pepulere nefanda
Dicere, quæ reprobat spiritus alma domus.
Non te præteream tacitus, Watsone fidelis,
Cujus consiliis intimus exiteras.
Præ cunctis gravius patitur Wyntonia vulnus,
Quæ desolatur commoriente patre.
Illius arx cecidit, tum propugnacula pacis:
Non ita jam tuta est præside cincta bono.
Et si vera licet fari, respublica murum
Præcipuum amisit, grandeque præsidium.
Perdidit & juvenis, cui dat Northfolcia nomen,
Tutorem, quo non sanctior orbe fuit.
Tu Bassatte, dole, cui tu threpteria debes,
Qui dici poteras, filius, ille pater.
Transit & hic mœror reginæ ad pectora nostræ,
Quæ studio vigili diligit usque probos.
Et pater, & gnatus, duo lumina maxima mundi,
Quod cadit ingenii fida columna dolent.
Mentio scribenti raptim mihi nulla Roperi
Exstitit, at Stephani summus amicus erat,
Qui si perpessus non est ergastula fœda,
Par reliquis animo, consociusque fuit.
Quid, Martine, tuos gemitus, lugubria verba,
Mœrores animi, tristitiamque loquar?
Hisque Copingerum ponam, quem sanguine junctum,
Mœnia cum domino continuere diu.
Sed qui cœlestes habitant, sedesque supernas,
Exsultant animam celsa videre poli.
Et gaudent, quoniam mortali corpore nexus
Exuit, & proprium terra cadaver habet.

Exſultant cives patria meliore coloni,
Quòd Stephani venit mens precioſa Deo.
Tu, Criſpine, capis dextra, Stephanumque reducis
Ad ſummi lætus ſplendida tecta poli.
Ac majeſtatem gaudente numine trino
Alloqueris, cujus flammea ſella micat.
Suſcipe tu Stephani mentem veneranda poteſtas,
Hancque ſinu ſiſtat jam patriarcha tuus.
Dat Mormanus opes, gemmas, niveamque coronam,
Manna ſacrum nomen, ſidereumque decus.
O Stephane eximii, & cuſtos prædivitis horti,
Numen fac clemens propitiumque tuis:
Vos agite ô populi ductores, cernite quantus
Hic fuit, innocue ut duxerit uſque dies.
Hujus ſi ſitis veſtigia ſancta ſecuti,
Quæ ſunt illius præmia veſtra ſient.
Ac ne quis dubitet dictis certiſſima ſervat
Fœdera, promittit qui ſua dona bonis.

A LIST OF

Such Perſons who appear to have been Members OF THE SOCIETY OF ANTIQUARIES In the Reign of Queen ELIZABETH,

Together with ſome ſhort Account of their Lives and Writings.

AGARDE ARTHUR,

WHOM Mr. Camden in his annals of king James ſtiles *Antiquariorum Inſignis*, was the ſon of Mr. Clement Agarde of Toſton in Derbyſhire. He was born A. D. 1540, and educated for the practice of the Law, but quitted the ſame on being appointed a clerk in the Exchequer. In 1570 Sir Nicholas Throgmorton, then chamberlain of the Exchequer, appointed him one of the deputy chamberlains, which place, under many chamberlains, he held forty-five years.

His unwearied reſearches in the Engliſh antiquities, and a conformity of ſtudies, brought him acquainted towards the latter part of his life with the celebrated Sir Robert Cotton, to whom he by his will bequeathed 20 volumes of valuable collections made by him relating to Engliſh hiſtory.

Beſides the ſeveral diſcourſes publiſhed in our two volumes of Curious Diſcourſes, he wrote a treatiſe under the Title of *Tractatus de Uſu & obſcurioribus verbis Libri de Domeſday*, which was preſerved in the Cotton Library under Vitellius, N° ix. He likewiſe with great judgment and labour compiled for the eaſe of his ſucceſſors and the benefit of the public, a book conſiſting of two parts; the firſt a catalogue of all ſuch records as were in the four treaſuries belonging to his majeſty,

and

and the ſecond an account of all leagues and treaties of peace, intercourſes and marriages with foreign nations, with a judicious index thereto. He had likewiſe the honour of diſcovering, that *Richardus filius Nigelli* was the author of *Dialogus de Negotiis Scaccarii*, which generally goes under the Name of *Gervaſius Tilburienſis*. After giving the moſt ample teſtimonies of his great abilities in his profeſſion, he died twenty-ſecond of Auguſt 1615, and was buried near the door of the Chapter-houſe in the Cloiſters of Weſtminſter Abbey. On the wall near the place of his interment is a ſmall defaced monument with this inſcription.

Arthurus Agard, *Antiquor,*
hic prope repoſit——62 *annos*
diligens ſcrutator——& Margaretta *Uxor*
ejus qui obiit——Decemb. 1615.

ANDREWS LANCELOT,

Was eſteemed the moſt profound caſuiſt and moſt eminent divine in the reigns of king James the Firſt and king Charles the Firſt; after having been educated firſt in grammar learning in the Cooper's ſchool at Ratcliff, and then in Merchant Taylors ſchool at London, he was choſen Fellow of Pembroke Hall in Cambridge, from whence he was ſome time after removed to Jeſus College in Oxford, being appointed one of the firſt fellows founded therein by Mr. Hugh Price. Soon after he was choſen a prebendary and reſidentiary of St. Paul's, and prebendary of the collegiate church of Southwell in Nottinghamſhire. Upon the death of Dr. Fulck he was choſen maſter of Pembroke Hall in Cambridge, and being appointed one of the chaplains to queen Elizabeth, ſhe was ſo pleaſed with his preaching, that ſhe firſt made him a prebendary of Weſtminſter, and afterwards Dean of that Church. On the 3d of November 1605 he was by king James promoted to the biſhoprick of Chicheſter, and at the ſame time made lord almoner to that king. In the year 1609 he was tranſlated to the biſhoprick of Ely, and ſoon after nominated a privy counſellor, firſt of England, and then of Scotland. Laſtly, on the 18th day of February

February 1618 he was promoted to the biſhoprick of Wincheſter, and deanery of the king's chapel, which two laſt preferments he held till his death. This great prelate, whom king James made choice of to vindicate his ſovereignty againſt the virulent pens of his enemies, was author of ſeveral learned and elaborate works in divinity, caſuiſtry, antiquity, and other branches of literature.

He departed this life on the 25th day of September 1626, in the 71ſt year of his age, and lies buried in the pariſh church of St. Saviour's, Southwark, under a very fair monument there erected by his executors.

BEALE ROBERT,

A learned civilian, and a zealous proteſtant*. The perſecutions carried on by queen Mary compelled him to fly from his native country, England, to which he did not return till ſome time after her death: In the year 1571 he attended Sir Francis Walſingham as ſecretary of embaſſy to the French king, and in the 1576 was himſelf ſent ambaſſador to the prince of Orange's court. Afterwards he became one of the clerks of the privy council, ſecretary of the council of York, and one of the plenipotentiaries for the treaty of peace between England and Spain. He died in the year 1601, and was buried at Allhallows, London Wall. Heylin Hiſt. Preſb. 304.—Fuller's Ch. Hiſt.—Strype's Life of Archbiſhop Parker.—Stowe's Survey of London.—Atkin's Hiſtory of Glouceſterſhire.—Digg's Comp. Embaſ. —Tanner's Bib. Britannica Hibernica, &c.

BOUCHIER HENRY.

Nothing more is known of him than that he was one of the fellows in the year 1591, and author of ſome of the Diſcourſes printed in the preceding volumes.

* Author of a remarkable *treatiſe in defence of the puritans. A defence of the validity of the marriage of the earl of Hertford with lady Catharine Gray againſt the ſentence given by the court of delegates*, and *of a diſcourſe concerning Pariſian maſſacre, by way of letter to the lord Burleigh*, preſerved in the Cotton Library. Titus F. iii.

BOWYER

BOWYER Mr.

He is by ſome ſuppoſed to be the ſame with Robert Bowyer who wrote a journal of the Tranſactions of Parliament from the firſt year of king Henry VIII. to the ſeventh of Edward VI. but it is hardly probable that the author of that work lived ſo long as to the commencement of the antiquary ſociety in the reign of queen Elizabeth.

BROUGHTON RICHARD.

Mr. Hearne takes him for the author of the *Eccleſiaſtical Hiſtory of Great Britain from the Nativity of our Saviour unto the Converſion of the Saxons*, printed at Douay in 1633, folio; of *the Monaſticon Britannicum*, printed at London in 1650, 8vo. and of ſome other tracts *. The inſcription on his graveſtone in the church of Great Stukely in Huntingdonſhire, ſtiles him *antiquariorum ſui ſæculi exquiſitiſſimus*, and this perhaps induced Mr. Hearne to think that he was the ſame perſon mentioned in the liſts of the members of the antiquary ſociety; but it is ſcarce probable that he was ſo. For we learn, as well from his Epitaph, as from Wood's Athenæ Oxon, that he was a clergyman. Whereas Mr. Tate, who was many years ſecretary to the ſociety, and knew beſt, aſſures us that the Richard Broughton, who was fellow of the antiquary ſociety, was a ſtudent of the Inner Temple, London, and was a juſtice of North Wales, temp. Jac. I. In a ſpare leaf in Mr. Tate's manuſcript collection, containing the names of ſome few of the members of the then ſociety of antiquaries, he is called *Hugh* Broughton; but this liſt is the hand-writing of John Antis, Eſq; late garter king at arms, who it may be ſuppoſed either wrote the chriſtian name *Hugh* inſtead of *Richard* by miſtake, or tranſcribed it from ſome other liſt not ſo authentick as that given by Mr. Tate.

* In his notes on the contents of the volume of Curious Diſcourſes publiſhed by him.

CAMDEN WILLIAM,

The moſt indefatigable antiquary and hiſtorian of his time, author of the incomparable BRITANNIA, and many other celebrated works, well known to the learned. He was born on the 2d day of May 1551, and received his ſchool learning, firſt, at Chriſt Hoſpital, afterwards at Iſlington, and laſtly at St. Paul's School, London, from whence he was removed to Oxford, and became a ſervitor in Magdalen College: from thence he went to Broad-gate Hall now Pembroke College, and afterwards to Chriſt Church. The firſt public employment which he enjoyed, was that of undermaſter of Weſtminſter School, to which he was promoted in 1575, and in the year 1593, he ſucceeded Dr. Grant as head-maſter of the ſame ſchool; a little before which time he had the prebend of Ilfracombe in the county of Saliſbury. The next preferment that he enjoyed was that of Richmond herald; and ſoon after his obtaining thereof he was advanced to the office of Clarenceux king at arms. He was one of the firſt founders of the antiquary ſociety in the reign of queen Elizabeth, and carried on a literary correſpondence with all the moſt learned men in Europe till his death, which happened on the 9th day of November 1623, in the 73d, as Mr. Hearne informs us, and not, as mentioned in his epitaph, in the 74th year of his age. On the 19th day of the ſame month his corpſe, attended by the whole college of heralds, and great numbers of the nobility and gentry, was carried with great funeral pomp to Weſtminſter Abbey, and there buried in the nave of that church. Over the place of his interment is erected a handſome monument of white marble with his effigies to the middle, and in his hand is a book with BRITANNIA inſcribed on the leaves.

CAREW RICHARD,

Of Eaſt Anthony, in the county of Cornwal, Eſq. After ſpending three years at Chriſt Church in Oxford, he was entered of the Middle Temple, London, where he continued three years more, applying himſelf with great diligence to the ſtudy of hiſtory and antiquities. In 1577 he married Juliana Arundel of Trerice, and retired into Cornwal; of

which county he was in 1581 appointed a juſtice of the peace. In 1586 he was high ſheriff of the ſame county, and in 1599 was one of the deputy lieutenants thereof, treaſurer of the lieutenancy, and colonel of a regiment of 500 men appointed for Cauſam Bay. In 1589 he was elected a member of the college of Antiquaries, and obtained great reputation by the learned oration which he made upon his admiſſion into that ſociety. About that time he made an hiſtorical ſurvey of his native county of Cornwal, which he publiſhed in the year 1602, in quarto, dedicating it to his friend Sir Walter Raleigh, then lord Warden of the Stannaries, &c. The learned Mr. Camden, in the 6th edition of his Britannia, mentions this work with the higheſt encomiums, and acknowledges that our author *had been his chief guide through the county of Cornwal.* The publick is likewiſe indebted to Mr. Carew's pen for a work, intituled, *The true and ready Way to learn the Latin Tongue, &c. London* 1654, 4to. for *a Tranſlation in Engliſh of a work, intituled, The Examination of Mens Wits, Lond.* 1594 and 1604, in 4to. written originally in Spaniſh by John Huarte, and for *an Epiſtle concerning the excellency of the Engliſh Tongue,* printed at the end of the ſecond edition of his Survey of Cornwal, London 1723, quarto. Anthony Wood aſſures us that our author was accounted a religious and ingenious man, learned, eloquent, liberal, ſtout, honeſt, and well-ſkilled in ſeveral languages. He was intimate with the moſt noted ſcholars of his time, particularly with Sir Henry Spelman, who extols his ingenuity, virtue, and learning: and a famous Scotch poet ſtiles him *another* Livy, *another* Maro, *another* Papinian, and highly extols him for his great ſkill in hiſtory and knowledge in the laws. He died on the ſixth of November 1620, and was buried amongſt his anceſtors in the church of Eaſt Anthony. Shortly after he had a ſplendid monument ſet over his grave with a Latin inſcription written thereon.

CLIFFE Mr.

We have no memoirs relating to this gentleman.

COMPTON

COMPTON WILLIAM Lord,

Eldeſt ſon and heir of Henry baron Compton of Compton Vineyatys in com. War. He was ſummoned to parliament in the 35th year of queen Elizabeth, and was one of her privy council. On the fifth of January 1604, he was made knight of the Bath at the creation of Charles duke of York; and on the 30th of Auguſt 1605 created a Maſter of Arts in the Univerſity of Oxford, the king being then preſent. Some years after he was conſtituted preſident of the council for the marches of Wales, and lord lieutenant of the counties of Worceſter, Hereford, Salop, and Warwick. On the ſecond of Auguſt 1618 he was advanced to the title of earl of Northampton; and on the 21ſt of April 1629 he was inſtalled knight of the garter. He died on the 24th day of June 1630, and was buried with his anceſtors in the church at Compton Vineyatys aforeſaid.

COPE Sir WALTER.

Mr. Stow in his ſurvey of London ſtiles this gentleman his worſhipful friend. But hiſtory hath not preſerved any further account of him.

COTTON Sir ROBERT.

He received his academical education at Trinity College in Cambridge, from whence he removed to London, where he was admitted into the college of antiquaries, and proſecuted his ſtudies with the utmoſt alacrity and uncommon ſucceſs. When he was no more then eighteen years of age he began to gather together that amazing collection of the moſt choice and ancient records, charters, and other manuſcripts which now form the Cottonian Library. In the year 1600 he wrote *A brief abſtract of the queſtion of precedency between England and Spain*, which was occaſioned by queen Elizabeth's deſiring the thoughts of the antiquarian ſociety on that point, upon her ſending Sir Henry Nevil ambaſſador to Boulogne to treat of a peace with arch-duke Albert. On the acceſſion of king James the Firſt Mr. Cotton received the order of knighthood, and was ſo much eſteemed

on account of his conſummate knowledge in hiſtory and antiquities, that during this whole reign he was conſulted as an oracle by the privy counſellors and greateſt men in the kingdom, upon every difficult point relating to the conſtitution. He compoſed, by the king's expreſs order, *An anſwer to ſuch motives as were offered by certain military men to prince Henry, to incite him to affect arms more than peace.* By order of the ſame monarch he alſo made *Collections relating to the revenue of the crown,* and *the manner and means how the kings of England have from time to time ſupported and repaired their eſtates.* The king employed him alſo to write *Animadverſions upon Buchanan's and Thuanus's Accounts of the behaviour and actions of Mary queen of Scots,* and to give a different turn to them from what had been done by thoſe two famous hiſtorians; and to examine whether, by the laws of the land, papiſts ought to be put to death or impriſoned. On this latter occaſion he wrote *Twenty-four Arguments, whether it be more expedient to ſuppreſs popiſh practices againſt the due allegiance of his majeſty, by the ſtrict executions touching Jeſuits and ſeminary prieſts; or to reſtrain them to cloſe priſons during life, if no reformation follows?* As alſo *Conſiderations for the repreſſing of the increaſe of prieſts, jeſuits, and recuſants without drawing of blood.* When the Spaniſh match was in agitation, he was employed by the Houſe of Commons to ſhow, by a ſhort examination of the treaties between England and the houſe of Auſtria, the unfaithfulneſs and inſincerity of the latter, and to prove that in all their tranſactions they aimed at nothing but univerſal monarchy. He likewiſe at the requeſt of his friends, as well as for his own private amuſement, wrote ſeveral books and tracts, ſome of which are printed, and others ſtill remain in manuſcript. He alſo made great collections for *The Hiſtory and Antiquities of Huntingdonſhire,* and for completing the noble deſign which he had formed to write *An Account of the State of Chriſtianity in theſe Iſlands, from its firſt Reception here to the Reformation.* When the order of Baronets was created by king James the Firſt, he was choſen to be

one,

one, in conſideration of the great ſervices which he had rendered to that king. Nor was this all, for king James was frequently wont to do him the honour of calling him *couſin*, the reaſon of which was this, William Cotton of Cotton, in the county Palatine of Cheſter, from whom Sir Robert was lineally deſcended, married Agnes daughter and heir of Walter de Redware of the county of Stafford. His ſon John in the 12th year of king Henry the Fourth, married Iſabella daughter and heir of William Falconer of Thurcaſton, in the county of Leiceſter. They had iſſue Richard, who married Elizabeth ſiſter and coheir of Sir Hugh Venables, knight; and a ſecond ſon William, who married Mary daughter and heir of Robert Wiſenham, Eſq; and being ſlain at the battle of St. Albans, 23 May 1455, left an only ſon and heir named Thomas, who was great grandfather to Sir Robert Cotton. Mary juſt now mentioned was grand-daughter of Agnes daughter and heir of *John Brus* or *Bruce* of Connington and Exton, Eſq; and brought the Connington eſtate into the Cotton family. This *John Brus* was lineally deſcended from Bernard, ſecond ſon of *Robert Brus* lord of Annandale in Scotland, and Iſabella daughter and coheir of David the ſecond Earl of Huntingdon. From this Robert and Iſabella was the royal family of Scotland deſcended; and by this means the Cotton family came to be related to the kings of Scotland. On this account likewiſe it was that Sir Robert uſed frequently to write his own name, *Robert Cotton Bruce*. This great and worthy man, reſpected and eſteemed both at home and abroad, who was the generous patron of all lovers of antiquity, and who had done incredible ſervice to learning, by the immenſe and ineſtimable library of manuſcripts collected by him, which, as well as his houſe, was always open to ingenious perſons, and which he ſecured for the public uſe and ſervice of poſterity. He departed this life on the ſixth day of May 1631, and was buried in the ſouth chancel of his own pariſh church of Connington, in the county of Huntingdon.

DAVIES.

DAVIES Sir JOHN.

He had his academical learning in Queen's College in Oxford, from whence he removed to the Middle Temple, London, where he was called to the bar, and practiſed the law; and became a burgeſs in the parliament held at Weſtminſter in the year 1601. He was at that time eſteemed an excellent poet, as well as an eminent lawyer, having publiſhed ſeveral pieces which were in high repute, particularly his poem on *The Original Nature and Immortality of the Soul*, dedicated to queen Elizabeth, and which Anthony Wood intitles *Noſce Teipſum*. On the death of queen Elizabeth, he was one of thoſe who accompanied lord Hunſdon into Scotland to congratulate king James. On their being introduced into his majeſty's preſence, king James enquired of lord Hunſdon the names of his attendants; and his lordſhip naming among them John Davies, the king aſked whether he was *Noſce Teipſum?* and being anſwered he was, he graciouſly embraced him, and aſſured him of his favour. On that monarch's arrival in England he made him firſt his ſolicitor, and then his attorney general in Ireland, where in 1606 he became ſpeaker of the Houſe of Commons of that kingdom. In the year following he received the honour of knighthood, and in 1612 was made one of his majeſty's ſerjeants at law, and was afterwards often appointed one of the judges of aſſize on the circuits. In 1616 he was appointed lord chief juſtice of the King's Bench, and on the ſeventh of December he died ſuddenly of an apoplexy at his houſe in the Strand, and was buried in the church of St. Martin in the Fields, within the liberty of the city of Weſtminſter. Beſides the poem above-mentioned he publiſhed the following works: 1. *A Diſcovery of the true Cauſes why Ireland was never entirely ſubdued, nor brought under obedience of the Crown of England, until the beginning of his majeſty's happy reign*, London 1612, 4to. 2. *A Declaration of our Sovereign Lord the King, concerning the title of his Majeſty's ſon Charles, the Prince and Duke of Cornwall*, London 1614. 3. *Le Premier Report des Caſes & Matters en Ley reſolves & adjudges en les Courts del Roy en Ireland*, Dublin 1615.

England's

England's Independency upon the Papal Power, hiſtorically and judicially ſtated by Sir John Davies, *Attorney General in Ireland, and by Sir* Edward Coke, *Lord Chief Juſtice of England, in two Reports, ſelected from their great volumes, with a preface written by Sir* John Pettus, London 1674. 4. *A perfect Abridgment of the Eleven Books of Reports of Sir* Edward Coke, London 1651, 12mo. 5. *Jus imponendi Vectigalia, or, the Learning touching Cuſtoms, Tonnage, Poundage, and Impoſitions on Merchandizes, &c. aſſerted,* London 1656 and 1659, 8vo. *A large Epiſtle to Robert Earl of Saliſbury of the ſtate of the counties of Monaghan, Fennanagh, and Downe, and of Juſtices of Peace, and other officers of Ireland*; 1607. Alſo *a Speech before Arthur Lord Chicheſter, Viſcount Belfaſt, Lord Lieutenant of Ireland. Hymns of Aſtrea in acroſtic Verſe. Orcheſtra,* a poem expreſſing the antiquity and excellency of dancing, in a dialogue between Penelope and one of her woers. Alſo *a Collection of Epigrams,* and *a Metaphraſe of ſeveral of king* David's *Pſalms,* which laſt was never publiſhed.

DETHICK Sir WILLIAM.

He was the ſecond ſon of Sir Gilbert Dethick, knight, the ſeventh Garter king at arms, and born 1542. In the ninth year of queen Elizabeth he was made Rouge Croix, and three years after York herald. In 1586 he ſucceeded his father as garter king at arms, being eſteemed the moſt ſkilful herald of his time, and is ſaid to have ſurpaſſed as much in abilities as in ſtation all his cotemporary officers at arms. Camden in his Britannia ſtiles him, *Omnium quæ ad honorem & nobilitatis rationem ſpectant ſtudioſiſſimus.* Previous to the coronation of king James the Firſt he received the honour of knighthood, and in 1606 ſurrendered the office of Garter in favour of his ſucceſſor Sir William Segar. He ſurvived this ſurrender about ſix years, and dying in 1612, at the age of 70 years, was buried in the cathedral church of St. Paul, London. He was one of the firſt members of the ſociety of antiquaries, and permitted them

them to hold their ſeveral meetings at his apartments in the herald's office *.

DODDERIDGE SIR JOHN.

He was born, A. D. 1555, at Barnſtable, in the county of Devon, where his father Richard Dodderidge was an eminent merchant. In the year 1572 he was entered of Exeter College in Oxford, and four years after removed to the Middle Temple, London, where he became a great proficient in the law, and a noted counſellor. In the 45th year of queen Elizabeth he was Lent reader of that houſe, and on the 20th of January 1603, called to the degree of ſerjeant at law, and had the honour of being appointed prince Henry's ſerjeant. From this employment he was ſoon after raiſed to that of ſolicitor-general to the king. On the 25th of January 1607, he was conſtituted the king's principal ſerjeant at law, and was knighted on the fifth day of July following. In 1612 he was by the vice-chancellor, both the proctors, and five others of the univerſity of Oxford, at his chambers in Serjeant's Inn, created maſter of arts, and a few days after was by his majeſty appointed one of the judges of the King's Bench, in which office he continued till his death, which happened on the 13th day of September 1628, and in the 73d year of his age. He lies buried under a fair large ſtone in the ambulatory before the door of the library formerly called the lady Mary's chapel, in the cathedral church of Exeter. Within the aforeſaid library is a very ſumptuous monument erected to his memory, containing his figure and that of his wife cut in alabaſter under a ſtately arch ſupported by marble pillars. This learned judge, by his happy education, forwarded with excellent natural parts and continual induſtry, became ſo general a ſcholar, that it was juſtly ſaid of him, *that it was hard to ſay whether he was a better* artiſt, divine, civil, or common lawyer: among his other ſtudies he was a great lover and ſearcher after antiquities, and became ſo eminent for his

* Lives of the heralds, a MS. in the library of Sir Joſeph Ayloffe, Bart.

ſkill

ſkill and knowledge therein, that he was looked upon as one of the ableſt members of the then college of antiquaries. The * following works were written by him. 1. *The Lawyer's Light, or due Direction for the Study of the Law,* London, 1629, 4to. 2. *A Compleat Parſon, or a Deſcription of Advowſons and Church Livings, delivered in ſeveral Readings, in an Inn of Chancery called New Inn.* Printed 1602, 1603, 1630, 4to. 3. *The Hiſtory of the Ancient and Modern Eſtate of the Principality of* Wales, *Dutchy of* Cornwal, *and Earldom of* Cheſter, 1630, 4to. 4. *The Engliſh Lawyer; a Treatiſe deſcribing a Method for the Managing of the Laws of this Land, and expreſſing the beſt Qualities requiſite in the Student, Practiſer, Judges, &c.* Lond. 1631, 4to. 5. *Opinion touching the Antiquity, Power, Order, State, Manner, Perſons, and Proceedings of the High Courts of Parliament in* England, Lond. 1658, 8vo. 6. *A Treatiſe of particular Eſtates,* Lond. 1677, 12mo, printed at the end of the fourth edition of *William Noy*'s book called *The Grounds and Maxims of the Law.* 7. *A true Repreſentation of forepaſſed Parliaments to the View of the preſent Times and Poſterity,* ſtill remaining in manuſcript. He alſo enlarged a book, intituled, *The Magazine of Honour,* Lond. 1642, which was afterwards publiſhed under his name by the title of *The Law of Nobility and Peerage,* Lond. 1657, 1658, 8vo.

DOYLEY.

In the Autograph of one of the diſcourſes printed in theſe volumes, he is ſtiled *Mr.* and in another *Doctor.* Mr. Tate's manuſcript before-mentioned calls him doctor of civil laws. But nothing more can be ſaid with certainty about him. Anthony Wood in the Athenæ Oxon. vol. I. p. 320. mentions two learned men of the name of Doyley, who flouriſhed at the cloſe of the 16th century. The one was Thomas Doyley, Eſq; who was ſteward to archbiſhop Parker, and the other was Dr. Thomas Doyley, who was

* Prince's Worthies of Devonſhire, p. 249. Athenæ Oxon. Vol. i. p. 442.

bred at Magdalen College in Oxford, and after having taken the degree of doctor of phyſick in the univerſity at Baſil, ſettled in London, became one of the college of phyſicians, and was frequented for his ſucceſsful practice in his faculty.

ERDESWICKE SAMPSON, Esq.

He was born at Sandon in Staffordſhire, and had his academical education in Braſen Noſe College, Oxford, from whence he retired to his patrimony at Sandon. He was ſo perfectly verſed in hiſtory and antiquities, that he was uſually called the *Staffordſhire Antiquary*. And Mr. Camden in his Britannia deſcribes him as *antiquitatis cultor maximus*. The learned world is indebted to him for writing a *Survey* of *Staffordſhire*, and a deſcription of *Beeſton Caſtle*, which after his death were firſt publiſhed from the author's original copy, by Sir Simon Degge, Knt. Lond. 1717, 8vo. and afterwards reprinted in 1723, 8vo. As alſo for a book intituled, *The true Uſe of Armory*, which in the year 1592 was publiſhed under the name of William Wyrley, who was for ſome years entertained in his family at Sandon. He died on the 11th of April 1603, and was buried in the pariſh church of Sandon aforeſaid, under a monument of free-ſtone with his figure thereon, erected by him in his life-time.

FLEETWOOD WILLIAM, Esq.

Of Pedworth in the county of Lancaſter, ſtudied the law in the Middle Temple, and became recorder of London, after which he was admitted a member of the college of antiquaries, and became a conſtant attendant, and a zealous promoter thereof. He died in the year 1604, and was buried at Great Miſſenden in Buckinghamſhire. The books he wrote are, *Elenchus annalium Regum Edwardi* V. *Ricardi* III. *Henrici* VII & VIII. Lond. 1572. 1712. *The Officer of a Juſtice of Peace*, Lond. 1658. *Tables to Plowden's Reports* 1599, fol. *An Oration made in the Guildhall before the Lord Mayor, &c. concerning the late Attempts of the Queen's Majeſty's evil ſeditious Subjects* on the 15th of October

October 1571, Lond. . . . . 12mo. *Carmen latinum in Laudem Tho. Chalonery de Republ. Angl.* 1579. And *Obſervationes in Lambarti archion, &c. de Poultrey Compter*, London, ſtill remaining in manuſcript.

HAKEWILL WILLIAM,

Brother of Dr. George Hakewill, author of the *Apology*, &c. was ſon of Mr. John Hakewill a merchant, and born in the pariſh of St. Mary Arches in the city of Exeter, where his father reſided. He had his academical learning at Exeter College in Oxford, but deſigning to make the common law his ſtudy and profeſſion, he entered himſelf of Lincoln's Inn, London, where in the year 1624 he was choſen Lent reader of that houſe, and was one of the benchers thereof, as *Sir William Dugdale in his Origines Juridiciales informs us*, from 1619 to 1648. During that time he ſerved in divers parliaments, and by order of the houſe of commons in the year 1641, printed in 8vo. a book written by him many years before, intituled, *The Manner how Statutes are enacted in Parliament by paſſing of Bills*; to which he annexed *A Catalogue of the Speaker's Names from* Petrus de Montfort, anno 44 Hen. R. 3. *down to* William Lenthall, choſen anno 16 Car. I. He was one of the executors of Sir Thomas Bodley, and at the time of the funeral of that eminent perſon was honoured by the univerſity of Oxford with the degree of maſter of arts. He died in the 80th year of his age.

HARTWELL ABRAHAM.

He was the laſt perſon admitted into the college of antiquaries before their diſſolution, and is ſuppoſed to be the ſame perſon, who in the year 1565 tranſlated into Engliſh from the Latin, a book intituled, *A Sight of the Portugal Pearl, in anſwer to the Epiſtle of Hieron Oſorius*, intituled, *A Pearl for a Prince.*

HENEAGE MICHAEL.

He was keeper of the records in the Tower of London.

HOLLAND JOSEPH.

He was born in the county of Devon, and was educated in the ſtudy of the common law in one of the Temples, London. He was an excellent herald, genealogiſt, and antiquary, as appears by many of his writings now preſerved in the library of the college of arms in London. Among them are *A collection of the names and arms of the nobility and gentry who lived in the county of Devon in and before the year* 1585.

LAMBARD WILLIAM.

He was the fourth ſon of John Lambard, alderman and ſheriff of London, a gentleman of a Kentiſh family, and was brought up to the ſtudy of the law in Lincoln's Inn, under the tuition of the celebrated antiquary Mr. Laurence Novell, where he made a conſiderable figure in his profeſſion, and was eſteemed one of the moſt learned antiquaries of his time; on which account he was in the year 1590 promoted to a conſiderable place in the alienation office; and on the 21ſt of January 1601 was appointed keeper of the records in the Tower of London. In the year 1687 he founded an hoſpital at Greenwich in the county of Kent, and died about the 1601. He was author of *A Perambulation of the County of Kent.* London, printed 1576, 1596, and 1640, 4to. Eirenarcha, or *The Office of Juſtice of Peace*, Lond. 1581, 4to. &c. *The Duties and Office of Conſtables, Bottſholders, Tithingmen, Church-miniſters, Church-wardens*, &c. 1582. 1594, 12mo. &c. Archion, or *A Comment on the High Courts of Juſtice in England*, 1624, 8vo. Ἀρχαιονόμια, &c. Lond. 1568, 4to. And of *A poſthumous alphabetical Deſcription of England*, printed 1730, 4to. He alſo compiled the work which was printed by Mr. Prynne under the title of COTTON's *Abridgement of the Records in the Tower of London*, and wrote ſome other pieces ſtill remaining in manuſcript.

LAKE Sir THOMAS.

He was born at Southampton, and became an amanuenſis to Sir Francis Walſingham, ſecretary of ſtate, who recommended him to queen Elizabeth to read to her French and

and Latin. A little before her death ſhe appointed him clerk of her ſignet, and her ſucceſſor king James knighted him, and appointed him a privy councellor, and one of his principal ſecretaries of ſtate. He is mentioned as one of the benefactors to St. John's College in Oxford.

LEIGH Sir FRANCIS.

He was a knight of the Bath, and an intimate acquaintance of the learned Camden, who by his will gave him a handſome legacy.

LEY Sir JAMES,

Sixth ſon of Henry Ley of Teffont Evias in Wiltſhire. After his removal from Brazen Noſe College in Oxford, where he received his academic education, he became a ſtudent of the law in Lincoln's Inn, and being called to the bench there in the 22d year of queen Elizabeth, was in her 44th year choſen Lent reader. In the following reign he was raiſed to ſundry honours and employments; in 1 Jac. I. he was called to the degree of ſerjeant at law, and in the year following conſtituted chief juſtice of the *King's Bench in Ireland.* In 6th of James, being then a knight, he was made king's attorney in the court of wards and livery in England. On the 20th July, 17th of James, he was created a baronet, and on the 29th of January in the following year he was conſtituted chief juſtice of the court of *King's Bench in England,* and counſellor of ſtate, and eleven days after advanced to the dignity of a baron of this realm, by the title of lord Ley of Ley in the county of Devon. King Charles the Firſt on the 5th of February in the firſt year of his reign advanced him to the title of earl of Marlborough, and ſoon after appointed him lord preſident of the council. Wood in *Athenæ Oxon.* ſays, he was a perſon of great gravity, ability, and integrity, and the ſame in all conditions. He married three wives, firſt, Mary daughter of John Petty of Stoke Talmage, in the county of Oxford, Eſq; ſecondly, Mary widow of Sir William Bower, knt. and laſtly, Jane daughter of John lord Boteler, and dying on the

the 14th day of march in the year 1628, lies buried in the pariſh church of Weſtbury, *under the plane*, in the county of Wilts, under a magnificent monument erected to his memory by his eldeſt ſon Henry, who ſucceeded him in his title and honours. Excluſive of ſeveral diſcourſes printed in theſe volumes, he was author of a collection of reports of divers caſes in law, tried in the time of king James, and in ſome part of the reign of king Charles the Firſt, which were printed in the year 1659, fol. Of a treatiſe of Wards and Liveries, printed in 1642, 8vo. and of ſome law tracts, which are likewiſe printed. He alſo collected, with an intention to publiſh, *The Annals of John Clynne, a Frier Minor of Kilkenny* (who lived in the time of king *Edward the Third*). *The Annals of the Priory of St. John the Evangeliſt of Kilkenny. The Annals of Multifernan, Roſſe*, and *Clonmell*, &c. and ſome other of the hiſtorical writers of Ireland.

OLDSWORTH MICHAEL.

He was ſometime a fellow of Magdalen College, and afterwards became ſecretary to Philip earl of Pembroke, by whoſe recommendation he was ſeveral times elected a burgeſs to ſerve in parliament for Old and New Sarum, and living till the grand rebellion, was appointed keeper of Windſor Park, and one of the two maſters of the prerogative office.

PATTEN or PATON WILLIAM.

He is ſuppoſed by biſhop Tanner in his Bibl. Brit. to have been rector of St. Mary Hill, London. He wrote *The Expedition into Scotland of the moſt woorthely fortunate Prince*, printed 1548, 12mo. And of *A Calendar of the Scripture, wherein the Hebrew, Chaldean, Arabian, Phœnician, Syrian, Perſian, Greek, and Latin Names of Nations, Countries, Men, Women, Idols, Cities, Hills, Rivers, and other places in the Bible mentioned by order* of letters are ſet down and turned into Engliſh, 1575, 4to.

SAVEL

SAVEL or SAVILE Mr.

It is uncertain who this gentleman was. All that is now known of him is, that he was a ſtudent in the Middle Temple, London; from whence it may be inferred, that the perſon here mentioned was not the learned Sir Henry Savile of Over Bradley in Yorkſhire, or his young brother Thomas, or the kinſman of Sir Henry Savile, who was uſually called Long Henry Savile.

SPELMAN Sir HENRY,

Of Congham in the county of Norfolk, knt. was born in 1562, and educated in ſchool learning at Walſingham in the ſame county, from whence he removed to Trinity College, Cambridge. At the age of 18 years he was entered of Lincoln's Inn, with a deſign of ſtudying the law, but diſliking the drudgery neceſſary for attaining to the lucrative part of that profeſſion, he applied himſelf to the inveſtigation of the hiſtory and antiquities of his native country, and the acquiring a perfect knowledge of its excellent conſtitution. In 1593 he was admitted a member of the ſociety of antiquaries, which brought him acquainted with the moſt eminent men in England for that kind of literature, and in the year following wrote *A Diſcourſe concerning the Coin of the Kingdom*, particularly to ſhow what great treaſures were exhauſted from England, by the uſurping tyranny of the Roman pontiffs. In 1604 he was appointed High Sheriff of Norfolk, and wrote the deſcription of that county, which was printed by John Speed in 1606. In the year 1607 king James the Firſt made him one of the commiſſioners for determining the unſettled titles to lands and manors in Ireland, which truſt he diſcharged with the greateſt reputation. In 1612, when he was 50 years of age, he quitted all publick employments, and ſettled in London with a full reſolution of purſuing that uſeful and important ſubject which he had made the object of his choice, viz. *The grounds of the law from original records.* In 1613 he publiſhed his elaborate treatiſe intituled, *De non temerandis Eccleſiis*, which he reprinted in 1615, 8vo. and ſoon after wrote *An Apology for the ſame*, and a *Latin epiſtle*

to

to Mr. Richard Carew, who had expreſſed his diſſatisfaction at ſome particulars in that piece. In 1626 he publiſhed his gloſſary under the title of *Archoelogus*, &c. and the year following wrote his treatiſe *de Sepultura*, or of *Burial Fees*, being at that time one of the commiſſioners appointed for enquiring into the oppreſſion of exacted fees. About this time he ſet about the making collections for a hiſtory of the Engliſh councils, which he branched into three parts. The firſt volume containing *The Hiſtory from the firſt Plantation of Chriſtianity, to the Coming in of William the Conqueror* in 1066, was publiſhed by him in 1639. Some miſtakes which were attributed to his gloſſary under the word *Feudum*, occaſioned his writing and publication of a piece intitled, *The Original Growth, Propagation, and Condition of Tenures by Knight Services in England.* At length this great man, worn out with ſtudy and years, being upwards of fourſcore years old, departed this life in the year 1641, at the houſe of his ſon-in-law, Sir Ralph Whitfield, in Barbican. From this place his corps was carried with great ſolemnity by order of king Charles to Weſtminſter Abbey, where it was interred in the South Iſle, near the door of St. Nicholas Chapel, at the foot of the pillar oppoſite to the monument of his ancient friend Mr. Camden. Upon his death his papers fell into the hands of his eldeſt ſon Sir John Spelman, and afterwards into thoſe of Sir Ralph Whitfield, many of which have been ſince publiſhed.

STOW JOHN.

He was born in the pariſh of St. Michael's, Cornhill, London, and bred to the trade of a Merchant Taylor, which he quitted in the early parts of his life, in order to indulge his favourite ſtudy, the hiſtory and antiquities of England, in which he was greatly encouraged by the benefactions of his patron, Dr. Matthew Parker, archbiſhop of Canterbury, William Lambard, Eſq; author of the perambulation of Kent, &c. Robert Bowyer, Eſq; keeper of the records in the Tower, the learned Mr. Camden, Dr. David Powell, author of the hiſtory of Wales, and divers other eminent perſons of his time. His fellow citizens appointed him

him the *city's chronicler*, which place he enjoyed till his death, which happened on the 5th day of April 1605, and in the 80th year of his age. He was buried in the pariſh church of St. Andrew Underſhaft in London, where his widow erected a decent monument to his memory. The publick is indebted to him for his curious and valuable *Survey of London*, which was firſt publiſhed by him in the year 1598, and afterwards in the year 1603. He ſpent above 40 years of his life in collecting out of ſome hundreds of ancient authors, regiſters, chronicles, &c. materials for a hiſtory of England, on the publication of which he ſet his heart: but he lived only to publiſh an abſtract of it under the title of *Flores Hiſtoriarum*, or *Annals of England*, which was firſt printed in 1600, in a thick quarto in black letter, and dedicated to archbiſhop Whitgift. From his papers Edmond Howes afterwards publiſhed that folio volume which goes under the name of *Stowe's Chronicle*. This indefatigable writer had a great hand in the improvements made to the ſecond edition of Hollingſhed's Chronicle, printed in 1587. He likewiſe corrected the edition of Geofrey Chaucer's poems, publiſhed in the year 1561, and furniſhed Mr. Spight with ſeveral learned hiſtorical notes for his edition of that ancient bard, printed in 1597.

STRANGEMAN JAMES,

The laborious compiler of a volume of judicious collections relating to the hiſtory and antiquities of Eſſex, and of another volume relating to the monaſteries of England, which latter is now in the Cotton library.

TALBOT THOMAS,

Commonly called *Limping Talbot*, from a lameneſs in one of his legs, was the ſon of John Talbot of Salebury in Lancaſhire, and promoted to the clerkſhip of the Records in the Tower of London. He aſſiſted Mr. Camden (who ſtiles him an excellent antiquary) in compiling the ſucceſſion of the earls of each county ſince the Norman conqueſt, as he did Mr. Abington in his Hiſtory of the biſhops of

Worceſter. Sundry of his collections relating to Engliſh antiquities are in the Cotton library, and others in that of the College of arms. He was living in the year 1580, but how many years longer he ſurvived, is uncertain.

THYNNE FRANCIS,

Was lineally deſcended from Ralph de Botevile of Stretton in Shropſhire, whoſe eldeſt ſon being nick-named *Thom at the Inne*, his deſcendants afterwards aſſumed the name of Thynne. He was the ſon and heir of William Thynne of . . . . . in the county of Kent, Eſq; maſter of the houſhold to king Henry the Eighth, and had his firſt education in Tunbridge-ſchool in Kent, under the learned Mr. John Proctor the maſter thereof, who is gratefully remembered by him as one of the Engliſh hiſtorians; from thence he was ſent to Magdalen College in Oxford, where he was entered a commoner; and, as himſelf informs us, was afterwards a member of Lincoln's-inn. Mr. Camden, a good judge of men, in his Britannia, and in his preface thereunto, gives him the ample character of having proſecuted the ſtudy of antiquities with great honour, ſtiling him an admirable antiquary, and adding, that he had with the greateſt judgment and diligence long ſtudied the antiquities of this kingdom. The firſt preferment that he obtained was that of *Blanche Lyon* purſuivant, after which, when he was fifty-ſeven years of age, he was on the 22d of April 1602, with great ceremony created Lancaſter herald at arms, having previouſly obtained a patent for that office dated the 23d October, 44 Eliz. Mr. Wood in his Athenæ Oxon. vol. i. p. 376, who is copied by Mr. Hearne, places the death of this laborious antiquary in the year 1611, but it muſt have happened ſooner, ſince he never ſurrendered his patent, and that granted to his ſucceſſor in office bears date in November 1608. Mr. Thomas Hearne in the table of contents to his edition of Curious Diſcourſes, ſpeaking of Mr. Thynne, ſays, that he is "*famous for being one of thoſe that*

"*continued*

" *continued Ralph Hollingſhed's Chronicle, though all the*
" *things that he was author of in that continuation are not*
" *commonly known, and for that reaſon not noted in* Athenæ
" Oxon. *the compiler whereof was ignorant that a great*
" *many ſheets (beginning in p.* 1419, *and ending in p.* 1575)
" *were caſtrated or ſuppreſſed, becauſe ſeveral things in them*
" *gave offence. Theſe caſtrated ſheets are now ſo very*
" *ſcarce, that I could never yet meet but with two copies of*
" *Hollingſhed with them, though I hear of ſeveral others.*
" *Thoſe two copies that I have ſeen were lent me by two*
" *learned friends, to whom I am alſo obliged upon many other*
" *accounts. I find by them that four diſcourſes of our author*
" *Thynne were ſuppreſſed,* viz. 1. A Diſcourſe of the earls
" of Leiceſter by Succeſſion; *which diſcourſe is thus intitled*
" *in the margin,* The Collection of the Earls of Leiceſter,
" by Francis Thynne, 1585. 2. The Lives of the Arch-
" biſhops of Canterbury, written by Francis Thynne, in the
" year of our redemption 1586, *which is the year in which*
" *this chronicle came out, and in which Robert Sutton alias*
" *Dudley earl of Leiceſter (of whoſe entertainment in the Low*
" *Countries there is a large and invidious account, ſaid to be*
" *written by John Stow) fell into diſgrace.* 3. A Treatiſe
" of the Lord Cobhams. 4. The Catalogue of the Lord
" Wardens of the Cinque Ports, and Conſtables of Dover
" Caſtle, as well in the time of king Edward, ſurnamed the
" Confeſſor, as ſince the reign of the Conqueror. *Both*
" *theſe were gathered, as well out of ancient records and*
" *monuments, as out of our hiſtories of England, in the year*
" 1586. *But whereas it is inſinuated in* The Engliſh Hiſtorical
" Library, that *there are no more ſheets ſuppreſſed than what*
" *relate to the lords Cobham, and that this was occaſioned be-*
" *cauſe of the then lord Cobham being in diſgrace, I muſt*
" *beg leave to aſſert, that this is one of the great number of*
" *miſtakes in that work, it being plain from what hath*
" *been already ſaid, that there were many ſheets beſides ſup-*
" *preſſed; and it being withal as plain from our Engliſh*
" *hiſtory, that the lord Cobham was at that time in fa-*
" *vour and not in diſgrace with queen Elizabeth.*" His

other works are, *The Annals of Scotland*, in ſome part continued from the time in which Ralph Hollingſhed left off, being anno 1571, unto the year 1586, London 1586, fol. There are alſo *Catalogues of the Protectors, Governors, or Regents of Scotland during the King's Minority, or during the Minority of ſeveral Kings for their inſufficiency for Government*; as likewiſe *Catalogues of all the Dukes of Scotland by Creation or Deſcent, of the Chancellors of Scotland, Archbiſhops of St. Andrews, and divers Writers of Scotland. A Catalogue of Engliſh Cardinals* ſet down in Hollingſhed's Chronicle at the end of queen Mary, which was uſed and followed by Francis biſhop of Landaff in his catalogue or hiſtory of them at the end of his book, *De præſulibus Angliæ Com. A Catalogue of the Lord Chancellors of England*, by the help whereof John Philpot, Somerſet herald, framed his *Catalogue of the Chancellors of England*, printed at London 1636, 4to. *The perfect Ambaſſador, treating of the Antiquity, Priviledges, and Behaviour of men belonging to that Function, &c.* dedicated by him to his good Lord, William lord Cobham, and long after his death printed at London, 1651, 12mo. *A Diſcourſe of Arms*, written to Sir William Cecil lord Burghley, and dated from Clerkenwell Green, 5th January 1593; the original manuſcript of which is now in the College of arms, London. *Miſcellanies of the Treaſury*, written to Thomas lord Buckhurſt, anno 1599, with the hiſtory of the lives of ſome of the lord treaſurers; which work he left imperfect by reaſon of his diſappointment in not ſupplying one of the then vacancies in the College of arms. *Matters concerning Heralds and Trial of Arms and the Court Military. A Diſcourſe of the Duty and Office of an Herald at Arms*, and other diſcourſes on ſubjects of Engliſh antiquities printed in theſe volumes. *A Diſcourſe upon the Philoſopher's Arms*, written in Engliſh verſe 1583. *Epitaphia ſive Monumenta Sepulchrorum*. Anglice & Latine quam Gallice. *Collections out of Domus Regni Angliæ—Nomina Epiſcoporum in Somerſet—Nomina Saxonica de donationibus a Regibus Eadfrido, Eadgare, & Edwardo—Catalogus Epiſcoporum Baton & Wells*

—*A Book*

—*A Book of Collections, and Commentaries de Hiſtoria & rebus Britannicis.—The Plea between the Advocate and Anti-advocate, concerning the Bath and Batchelor Knights*, wherein are ſhewn many antiquities touching knighthood, written in the year 1605, and much uſed by the late Mr. Anſtis in the Account which he publiſhed of the inſtitution of the order of the Bath.

Collections out of manuſcript Hiſtorians, Regiſters of Abbies, Ledger Books, and other ancient Manuſcripts, 4 vols. folio. Beſides theſe he wrote ſeveral notes on, and corrections of Chaucer's works, which he intended to have publiſhed as an addition to the edition of that author, made by his father when he was clerk of the kitchen to king Henry the Eighth: but theſe, as alſo conſiderable materials for the writing Chaucer's life, he gave to his friend Mr. Thomas Spight of Cambridge, who made great uſe of them in the ſecond edition of Chaucer's works, which he printed in 1602.

His original hiſtory of Dover Caſtle and the Cinque Ports, was, as biſhop Nicholſon informs us, in the library of Dr. More biſhop of Ely.

WHITLOCK Sir JAMES.

He was born at London in the year 1570, and educated in Merchant Taylors ſchool, from whence in the year 1588 he was elected a ſcholar of St. John's College, Oxford; he afterwards ſettled in the Middle Temple, London, and was Summer reader of that houſe in the 17th year of king James the Firſt. In 1620 he was knighted, and elected one of the burgeſſes in Parliament for Woodſtock: after which he was ſucceſſively Chief Juſtice at Cheſter, one of the Juſtices of the Common Pleas, and one of the Juſtices of the King's Bench. He was perfectly ſkilled in the Latin, Greek, and Hebrew, an excellent genealogiſt, perfectly verſed in the Jewiſh hiſtory, converſant in the ſtudy of antiquity and heraldry, and was not exceeded by any in the knowledge of his own profeſſion of the Common Law of England. He died the 26th day of June 1632, and was buried at Fawley near High Wicombe

in

in Bucks. Over his grave was afterwards erected by his ſon Bulſtrode Whitlock, Eſq; a ſtately monument, as alſo a fair chapel, which ſerves for the burial-place of his deſcendants.

His works are—*Readings* in the Middle Temple Hall, Aug. 2, 1619.—*On the Statute* 21 Hen. VIII. c. 13. now in MSS. in the Aſhmolean Muſeum, Oxon.—*Several Speeches in Parliament*, printed in the Sovereign's Prerogative, and the Subjects Priviledges diſcuſt, &c. in the third and fourth of king Ch. I. Lond. 1657, fol.—*A Diſcourſe on the Antiquity, Uſe, and Ceremony of lawful Combats in England*, and ſome other diſcourſes printed in theſe volumes.

His epitaph is printed in the appendix, N° I.

WISEMAN THOMAS.

He was deſcended of an ancient family, ſeated at Great Waltham in Eſſex, and who had large poſſeſſions there, and in other parts of that county.

WESTON ROBERT, Esq.

He was of the Middle Temple, London, where he was called to the bar, and afterwards practiſed the law, being eſteemed an eminent counſellor.

Mr. JONES,

Whoſe learned anſwers to Mr. Tate's queſtions are printed at p. 128 of the firſt volume of theſe diſcourſes, does not appear to have been a member of the ſociety of antiquaries, although he was extremely well qualified for that honour; however it may not be improper to inſert in this place what Mr. Hearne ſays of him in his table of contents to his edition of the Collection of Curious Diſcourſes, viz. " Perhaps he was the ſame with Sir William " Jones, a man of Britiſh race both by father and mother " (for his mother was Margaret daughter of Humph. Wynn " ap Meredyth, &c. Eſq;) who, after he had ſpent five years in " Edmund Hall in this univerſity, went to the Inns of " Court, and became at length a judge, and was a perſon

" of

" of admirable learning, particularly in the municipal laws,
" and in the Britiſh antiquities, and died in the latter
" end of the year 1640, being at leaſt 84 years of age.
" You may ſee more of him in *Athenæ Oxon.* But the com-
" piler of that work is miſtaken in ſaying that he was edu-
" cated in the free-ſchool at Beaumaris in Angleſey; that
" ſchool was not founded till the year 1603. It was by his
" advice the founder proceeded, and he was one of the firſt
" feoffees. The author of theſe anſwers to Mr. Tate's
" queſtions ſeveral times mentions a *Book of Laws*, which
" himſelf had written, and in which many things were
" inſerted about the Britiſh antiquities. But this work, to
" which an accurate table was added for the more ready
" finding of any particular, was never yet printed, as I
" think, and therefore it is no wonder that it is not men-
" tioned by the compiler of *Athenæ Oxon.* who had not
" met with a copy either of theſe anſwers, or of the Book
" of Laws. If the author was not the ſaid Sir William
" Jones, it is probable he was not different from John
" Jones of Gelhy Lyvdy in Flintſhire, Eſq; a great antiquary,
" and a curious collector of Britiſh MSS. and a conſtant
" correſpondent with that candid and learned antiquary
" Robert Vaughan of Hengurt, Eſq; But at preſent I in-
" cline rather to the firſt opinion.

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